



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. R. v Canada Employment Insurance Commission*, 2019 SST 1622

Tribunal File Number: GE-18-3309

BETWEEN:

C. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: December 13, 2018

DATE OF DECISION: January 10, 2019

DECISION

[1] The appeal is allowed. The Claimant is not employed in teaching, and as such, is not disentitled from receiving benefits under section 33 of the *Employment Insurance Regulations* (Regulations).

OVERVIEW

[2] The Claimant worked for the Province of Nova Scotia, through one of their school boards, as an early childhood educator in their non-compulsory, play-based, pre-primary program for three to four-year-old children.

[3] The Claimant requested benefits under the *Employment Insurance Act* during the summer months.

[4] The Canada Employment Insurance Commission (Commission) determined that the Claimant was employed in teaching, and because she did not fall within one of the exceptions that would entitle her to benefits during a non-teaching period, they disentitled her from receiving benefits under section 33 of the Regulations.

[5] I must decide if the Claimant was employed in teaching.

ISSUES

[6] Does the Claimant's work as an early childhood educator in the Nova Scotia pre-primary program qualify as "teaching" as defined in the Regulations?

ANALYSIS

[7] A claimant who is employed in teaching for any part of their qualifying period is only entitled to receive benefits for a week of unemployment that falls within a non-teaching period if they prove, on a balance of probabilities, that they fall within one of these exceptions:

- a) their contract of employment for teaching has terminated;
- b) their employment in teaching was on a casual or substitute basis; or

- c) they qualify to receive benefits in respect of employment in an occupation other than teaching.¹

[8] It is undisputed that the Claimant requested benefits during a non-teaching period, and that she does not fall within one of the exceptions. The issue is whether the Claimant was working in the occupation of teaching.

Does the Claimant’s work as an early childhood educator in the Nova Scotia pre-primary program qualify as “teaching” as defined in the Regulations?

[9] No. The Claimant was not employed in teaching as defined in the Regulations.

[10] The Regulations broadly define “teaching” as the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school.²

[11] The Commission argued that the Claimant’s work as an early childhood educator is teaching, and therefore, because she does not fall within one of the three exceptions, she is not entitled to receive benefits for the summer non-teaching period.

[12] The Claimant argued that she was not teaching, and therefore, she should not be disentitled from receiving benefits.

[13] I agree with the Commission that the Claimant works in a pre-elementary setting, however, I agree with the Claimant that she is not employed in teaching as defined by the Regulations.

[14] I find that the Claimant is not employed in teaching because she does not instruct the children in her care. She does not provide instruction in reading, writing or arithmetic, or teach any lesson plans.

¹ Section 33(2) of the Regulations

² Subsection 33(1) of the Regulations. See also *Canada (Attorney General) v. Lafrenière*, 2013 FCA 175.

[15] I find that the occupation of teaching requires some element of instruction, which is not present in the Claimant's work. The Claimant does not follow a curriculum where the children have outcomes to achieve. The children in her care are not marked or graded.

[16] The Claimant's work does not entail any aspect of teaching in the usual sense of the word. The Claimant works in a play-based setting. There are no desks for the children. The room resembles a daycare, with a make-believe area, with dress up clothes and a kitchen, and a building area with blocks.

[17] As explained in a letter from the Acting Executive Director, Early Childhood Development, for the Department of Education and Early Childhood Development, Province of Nova Scotia (Executive Director), and by the Claimant, as an early childhood educator, the Claimant follows the Nova Scotia Early Learning Curriculum Framework. All early childhood educators whether employed by a school board or a licenced childcare centre must follow this framework. The framework provides guidelines for the implementation of the play-based program following the child's lead. The framework is not subject matter or outcome-based, and although the word "curriculum" is in the title, the Framework does not comprise outcomes for the children. As the children are not working toward any specific outcome, the Claimant does not mark or grade children.

[18] I find that the children not having to achieve outcomes, and not being graded, is strong evidence that the Claimant is not instructing or teaching the children.

[19] The Commission pointed out that the Claimant works for the Provincial government through the school board. I find that this is not a compelling argument that the Claimant is teaching because school boards employ many non-teaching personnel, such as custodians, and librarians.

[20] I find that the fact that the program operates from a school building is not a compelling argument that the Claimant is teaching because many people work in the school who are not employed in teaching, such as coaches of after-school sports, and early childhood educators working in YMCA programs operating from schools. The Executive Director explained that the

program operates from school buildings because it is cost-effective, and helps children adapt to the public school system when they enter primary.

CONCLUSION

[21] The Claimant is not employed in teaching because she does not teach or provide instruction to the children in her care. Accordingly, the Claimant is not disentitled from receiving benefits under section 33 of the Regulations.

[22] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	December 13, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. R., Appellant