



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. P. v Canada Employment Insurance Commission*, 2019 SST 1571

Tribunal File Number: GE-19-3207

BETWEEN:

A. P.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: October 1, 2019

DATE OF DECISION: October 7, 2019

DECISION

[1] The appeal is dismissed. This means the Claimant is not entitled to be paid employment insurance (EI) benefits during the non-teaching period from July 1, 2019, to September 2, 2019.

OVERVIEW

[2] The Claimant was employed as a Long Term Occasional teacher during the 2018/2019 school year. Before the end of the school year the Claimant signed an Agreement for a Long Term Occasional Teaching Assignment from September 3, 2019 to March 2, 2020. After the school year ended, he applied for EI benefits. The Commission decided the Claimant could not be paid EI benefits because he did not meet any of the exceptions to the rule that teachers are not entitled to receive benefits during non-teaching periods.

[3] I must decide whether the Claimant is entitled to benefits during the non-teaching period from July 1, 2019 to September 2, 2019. The Commission says the Claimant had a continuing relationship with the employer because he had accepted the new contract before his old contract expired and that because his employment from September 4, 2018, to June 28, 2019, was sufficiently regular, continuous and pre-determined it did not meet the definition of casual or substitute teaching. The Claimant disagrees and says that he was classified as a long term occasional teacher, which meant he was a casual teacher, he did not receive any pay or benefits over the summer and he did not have a contract with the school board for the 2019/2020 school year.

PRELIMINARY MATTER

[4] The Commission also decided the Claimant could not be paid EI benefits for the period September 3, 2019, to March 2, 2020, because he was not unemployed during that period. It based this decision on the Agreement for a Long Term Occasional Teaching Assignment the Claimant provided to the Commission. At the hearing, the Claimant stated that he was not appealing this decision because he was successful in obtaining a contract teaching position for the 2019/2020 school year. As a result, my jurisdiction is limited to determining whether the Claimant is eligible for EI benefits during the non-teaching period.

ISSUE

Is the Claimant entitled to EI benefits during the non-teaching period from July 1, 2019, to September 2, 2019?

ANALYSIS

[5] The law says “teaching” means the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school.¹

[6] Teachers are not entitled to receive EI benefits other than pregnancy or parental benefits during the summer, winter, and spring non-teaching periods unless they meet certain conditions.² The purpose of the employment insurance scheme is to pay benefits to those who are “truly unemployed.” Because teachers are not “truly unemployed” during school breaks, they are not entitled to benefits.³

[7] In cases of genuine unemployment during the non-teaching periods, teachers may receive employment insurance benefits during school breaks if they meet one of the following conditions: their contract for teaching employment has terminated; the employment in teaching was on a casual or substitute basis; or, the claimant qualifies to receive benefits on the basis of hours of insurable employment accumulated in an occupation other than teaching.⁴

[8] The onus is on the Claimant to prove he is entitled to benefits.⁵

Issue: Is the Claimant entitled to EI benefits during the non-teaching period from July 1, 2019, to September 2, 2019?

[9] No, I find the Claimant does not meet any of the exceptions set out in the *Employment Insurance Regulations* and therefore is not entitled to EI benefits during the non-teaching period.

¹ *Employment Insurance Regulations*, section 33(1). This is how I refer to the sections of the legislation that apply to this appeal.

² *Employment Insurance Regulations*, section 33(1)

³ *Employment Insurance Act*, section 49(1). *Canada (Attorney General) v. Falardeau*, A-A0396-85. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal

⁴ *Employment Insurance Regulations*, section 33(2)

⁵ *Employment Insurance Act*, section 49(1); *Falardeau* A-396-85.

Termination of Contract

[10] An exception to disentitlement exists when the Claimant's contract of employment teaching has terminated. When determining whether his teaching contract has terminated, I must consider whether there was a "veritable break" in the continuity of his employment such that he was truly unemployed during the summer break.⁶

[11] The Claimant testified that he was employed as a Long Term Occasional Teacher. A Long Term Occasional Teacher fills in for another teacher over a period of time when the other teacher is absent on a maternity leave or other leave of absence. He said that he works when school is in session. He does not have a signed contract and he does not get paid for the Christmas, March or summer breaks. The Claimant said that he was not a contract teacher who continues to get paid during those periods. He was not able to continue his group insurance coverage during the summer break. The Claimant testified that he earned seniority while he was employed and that his seniority carried over from one school year to the next. He said that he contributes to a pension plan and that his contributions are also carried over from one year to the next. His terms and conditions of employment are governed by a collective agreement.

[12] The Claimant submitted that his contract did terminate on June 28, 2019. He did not teach and he did not get paid over the summer. The Claimant said that the agreement form he signed was not a contract. It was the case that he would be replacing the same teacher in the 2019/2020 school year whom he replaced in the 2018/2019 school year because that teacher was extending her maternity leave to March 2020. Under that agreement he would be working full time hours in the 2019/2020 school beginning in September 2019. The Claimant testified that at the time he signed the agreement form he was not going to take the assignment because he was looking for permanent work. As it was, he did not take up the position because he was successful in getting a contract appointment for the 2019/2020 school year.

[13] The Commission says that the Claimant did not meet the onus of proving that his teaching contract terminated on June 28, 2019 and that he would not be returning to his employer following the non-teaching period. The Commission says the Claimant accepted another

⁶ *Stone v. Canada (Attorney General)*, 2006 FCA 27

teaching contract before the end of his existing contract. Because the Claimant's teaching experience is recognized for seniority purposes and his pension contributions carry forward, the Commission says the employment relationship continued when the Claimant entered into a new agreement with his employer to teach in the following school year. Consequently, the Commission says the Claimant does not meet the exception of having his contract terminated.

[14] I acknowledge the Claimant's submission that his contract expired on June 28, 2019 and that he did not work during the summer break for his employer. While it is the case that he is not a "contract" teacher in the eyes of his employer that classification does not decide the issue. Instead, what decides the issue whether the Claimant had a veritable break in his employment relationship with the employer.

[15] To decide whether there was a veritable break in the employment relationship I must consider several factors. The Claimant has argued that because he did not work or get paid over the summer months that he did not have a contract with his employer. I find that, however, the Agreement for a Long Term Occasional Teaching Assignment, is for all intents and purposes a contract.⁷ The employer offered and the Claimant accepted a teaching assignment for the period September 3, 2019, to March 2, 2020, during which time he would be paid at 100% of his annual salary. The form states the agreement was made June 28, 2019 and is signed by the Claimant, the Principal and the Superintendent. The Record of Employment (ROE) shows the last date for which the Claimant was paid was June 28, 2019. As a result, I find that, because the Claimant accepted the employer's offer to continue in a teaching position before the end of his existing contract, despite his intention to not fulfil that contract, there was no genuine severance of the employment relationship. Not getting paid over the summer months is simply a term of the agreement and does not, in my opinion sever the employment relationship particularly as the Claimant's seniority continued to be recognized and his pension contributions carried forward to the next school year. Accordingly, the Claimant has not proven that he met this exception.

Teaching on a casual or substitute basis

⁷ For this finding, I considered the definition of insurable employment provided in section 5(1)(a) of the *Employment Insurance Act* which states that insurable employment is employment ... by one or more employers, under any express or implied contract of service or apprenticeship, written or oral ...

[16] An exception to disentitlement exists when the Claimant's employment in teaching during the qualifying period is on a casual or substitute basis. This exception has been interpreted by the Tribunal's Appeal Division to mean that the employment in teaching during the qualifying period must have been "predominantly or entirely" on a casual or substitute basis for the exception to apply.⁸ While I am not bound by Appeal Division decisions, I agree with this interpretation and will adopt it for consistency.

[17] The Claimant stated that his employer told him he is a casual employee. He does not have his own classroom, unlike a permanent teacher. He submitted that he should be eligible for EI benefits because he was a casual teacher and was not paid during the summer months.

[18] When determining whether the Claimant's employment as a teacher was on a casual or substitute basis it is necessary to consider the nature of the employment itself rather than simply the Claimant's status with the school board. A teacher who works in a continuous and pre-determined teaching role is not a casual or a substitute teacher.⁹

[19] The Commission says that because the Claimant's employment from September 4, 2018, to June 28, 2019, was sufficiently regular, continuous and pre-determined it does not meet the definition of casual or substitute teaching. The Commission submits that the Claimant did not meet this exception and cannot be entitled to benefits.

[20] The Claimant testified that he was employed as a Long Term Occasional teacher during the 2018/2019 school year. He was replacing a teacher who was on maternity leave. He taught full days during the entire 2018/2109 school year. He gave the Commission an excerpt from the Elementary LTO list, as of July 17, 2019, showing his name and his seniority date. He wrote the excerpt "proves I am an occasional (supply) teacher." The Claimant also provided the Commission with a copy of his pay stub that describes his current earnings as "Elem. LTO" and lists 1.00 unit for each of the 10 days over a two-week period. The Claimant submitted with his appeal to the Tribunal a letter from the school board stating that he is employed as an Occasional Teacher and does not get paid for summer holiday, Christmas holiday and March break. The

⁸ *K.C. v. Canada Employment Insurance Commission*, AD-17-278

⁹ *Dupuis-Johnson v. Canada (Canada Employment and Immigration Commission)*, A-511-95

Claimant submitted that the school board told him that because he was a non-permanent teacher he was a casual teacher.

[21] Based on the Claimant's testimony that he worked all the teaching days in the 2018/2019 school year, I find that the Claimant's employment was sufficiently regular, continuous and pre-determined. As a result, I find that the Claimant has not proven that he was employed on a casual or substitute basis. Accordingly, the Claimant has not proven that he meets this exception.

Hours from employment other than teaching

[22] The Claimant confirmed that he did not work in any employment other than teaching. I see no evidence to contradict this.

CONCLUSION

[23] As noted above there are three exceptions specified in the *Employment Insurance Regulations* that allow teachers to receive EI benefits during the non-teaching period. The Claimant has not shown that he satisfies any of the three exceptions. As a result, I find that the Claimant is not entitled to receive EI benefits during the summer break.

[24] The appeal is dismissed.

Raelene R. Thomas
Member, General Division - Employment Insurance Section

HEARD ON:	October 1, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. P., Appellant