



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. K. v Canada Employment Insurance Commission*, 2019 SST 1638

Tribunal File Number: GE-19-3748

BETWEEN:

**J. K.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Raelene R. Thomas

HEARD ON: November 26, 2019

DATE OF DECISION: December 6, 2019

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant was employed as a teacher during the 2017/2018 school year. She established a claim for EI benefits on July 1, 2018. She returned to teaching on September 9, 2018, and finished work on November 26, 2018. She then renewed her July 2018 claim and received EI pregnancy benefits and EI parental standard benefits until June 29, 2019. The Claimant then made a new claim for EI regular benefits effective June 30, 2019. The Commission decided the Claimant could not be paid EI benefits because she 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 her employer because she accepted a new contract while on maternity leave from her employer. Her pension and seniority carried forward. It also says because her employment from September 10, 2018, to November 26, 2018, was sufficiently regular, continuous and pre-determined it did not meet the definition of casual or substitute teaching. The Claimant disagrees. She says that she earned enough hours to receive regular EI benefits and should not be denied benefits because she signed a new contract for a permanent position.

## **PRELIMINARY MATTER**

[4] On November 27, 2019, and December 3, 2019, after the hearing, I requested the Commission investigate an issue. During the hearing the Claimant made reference to her prior claim for EI benefits that ended on June 29, 2019. As there was no information in the appeal file on that claim, I asked the Commission to provide the dates of that claim, the types and duration of EI benefits that were paid to the Claimant and the Record of Employment (ROE) for that claim. The Claimant was made aware during the hearing that I would making this request and if

necessary, she would be provided with an opportunity to comment if the information was not consistent with her testimony. The Commission provided the ROE and supplementary representations on December 3, 2019. As the information did not contradict her evidence given at the hearing, I did not provide Claimant an opportunity to comment. I admitted the information and the ROE into evidence because I consider it to be relevant to the issue because the Claimant worked while on claim and wanted to use those hours to establish a new claim in July 2019.

## ISSUES

[5] **Issue #1:** Was the Claimant employed in teaching?

[6] **Issue #2:** If so, is the Claimant entitled to receive benefits during a non-teaching period?

## ANALYSIS

[7] A teacher is someone who is employed in the occupation of teaching in a pre-elementary, an elementary, or a secondary school, including a technical or vocational school.<sup>1</sup>

[8] Teachers are not entitled to receive regular EI benefits during non-teaching periods. A non-teaching period is an annual period that occurs at regular intervals during which no work is performed by a significant number of people employed in teaching.<sup>2</sup> The expression “non-teaching period” is not restricted to the summer holidays, but includes any breaks during the school year.<sup>3</sup>

[9] A claimant who was employed in teaching during their qualifying period is not entitled to receive benefits for any week of unemployment that falls in a non-teaching period unless the claimant’s contract of employment for teaching has terminated, the claimant’s employment in teaching was on a casual or substitute basis, or the claimant qualifies to receive benefits from an

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<sup>1</sup> *Employment Insurance Regulations*, section 33(1). This is how I refer to the legislation that applies to this appeal.

<sup>2</sup> *Employment Insurance Regulations*, section 33(1)

<sup>3</sup> *Dupuis-Johnson v. Canada (Canada Employment and Immigration Commission)*, A-511-95, *Grenier v. Canada (Employment and Immigration Commission and the Deputy Attorney General of Canada)*, A-512-95, *Canada (Attorney General) v. St-Coeur*, A-80-95). This is how I refer to decisions of the courts that contain principles I must apply to the circumstances of this appeal.

employment other than teaching.<sup>4</sup> These are the exemptions to disentitlement. A claimant need only satisfy one of these exemptions to establish an entitlement to EI benefits.

[10] Unless there is a break in the continuity of a teacher's employment, the teacher will not be entitled to EI benefits for the non-teaching period. The purpose of the EI program is to pay benefits to those who are truly unemployed. Teachers are not truly unemployed during school breaks, even if they are not being paid in the summer break, so they are not entitled to benefits.<sup>5</sup>

**Issue #1: Was the Claimant employed in teaching?**

[11] It is undisputed that the Claimant was employed in teaching. The Claimant testified that she was a teacher. As such, I accept as fact that the Claimant was employed in teaching, and is a teacher within the meaning of the *Employment Insurance Regulations*.

**Issue #2: Is the Claimant entitled to receive benefits during the non-teaching period?**

[12] No, I find the Claimant's situation does not meet any of the exceptions set out in the *Employment Insurance Regulations*.<sup>6</sup> This means she is disentitled from receiving EI benefits from July 1, 2019, to September 2, 2019.

[13] The Claimant is seeking EI benefits for the summer break. As neither party disputes that this is a non-teaching period, I accept that the summer break should be considered a non-teaching period.

***Termination of Contract***

[14] An exception to disentitlement exists when the Claimant's contract of employment teaching has terminated. When determining whether the Claimant's teaching contract has terminated, I must consider whether there was a "veritable break" in the continuity of her employment such that she was truly unemployed during the summer break.<sup>7</sup>

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<sup>4</sup> *Employment Insurance Regulations*, section 33(2)

<sup>5</sup> *Oliver v. Canada (Attorney General)*, 2003 FCA 98, *Stone v. Canada (Attorney General)*, 2006 FCA 27

<sup>6</sup> *Employment Insurance Regulations*, section 33(2)(a)-(c)

<sup>7</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27

[15] The Claimant testified that in September 2018 she was hired at the last minute by a school board to replace a full-time teacher for the 2018/2019 school year. Her hours of work were full-time. Her employer was aware that she could only teach until the end of November 2018 as she expected to deliver her child around that time. However, the exact date that she would stop working was not known when she was hired. The ROE issued by the employer states the reason for issuing was "F" which is the code letter for Maternity. The expected date of recall is "Unknown."

[16] The Claimant testified that she would be able to contribute to her pension plan for the time she was on maternity leave. If she did not contribute she could work longer prior to her retirement. The Claimant said that she is a member of a union and that her employment is governed by a collective agreement. She thinks that her seniority is carried forward from one period of employment to the next. She paid 100% of her group insurance premiums while she was on maternity leave.

[17] The Claimant said that she wanted to have a full year of EI maternity and parental benefits. She was told that her claim would run out on June 28, 2019 and that she would need 600 hours of insurable employment in her qualifying period to make a new claim for EI maternity and EI parental benefits. She had worked 456 hours of insurable employment as a teacher in her qualifying period which was enough to qualify her for EI regular benefits. She applied for those benefits because she was ready, willing and able to work. When asked, the Claimant said that she had not received a clearance to return to work from her doctor.

[18] The Claimant's application for EI benefits states that she was offered and accepted a new contract to teach on June 14, 2019. The position was due to start on September 9, 2019. She testified that the position was permanent position in a different school from the school where she taught for the 2018/2019 school year. The Claimant said she did not sign the contract until September 2019. She submitted that because the contract was not signed until September 2019 and that she did not know if she would be recalled to work when she stopped working in November 2018 that she should be entitled to her EI benefits. The Claimant said that she did not see how her pension established a link in her employment from one school year contract to the next.

[19] To determine whether a teaching contract has terminated, I must consider all the relevant factors, including but not limited to: the length of the employment record, the duration of the non-teaching period, the customs and practices of the teaching field in issue, the receipt of compensation during the non-teaching period, the terms of the written employment contract, if any, the employer's method of recalling the claimant, the record of employment form completed by the employer, other evidence of outward recognition by the employer, and the understanding between the claimant and the employer and the respective conduct of each.<sup>8</sup>

[20] Teachers who have their contracts renewed before their teaching contracts expire, or shortly thereafter, for the new school year are not unemployed and there is continuity of employment.<sup>9</sup> The Claimant argued that she taught in a different school in the 2018/2019 school year from the one that she was hired to teach in for the 2019/2020 school year. She also argued that the two periods of employment were different. The 2018/2019 employment was a fill-in or replacement position. The 2019/2020 position was a permanent position. However, I find that there was a link between these two periods of employment for a number of reasons. First, although the Claimant was employed to teach in two different schools the ROEs show that it was the same school board that employed her in each year. Second, the Claimant testified that she was on a maternity leave from her employment and was able to continue to participate in the group insurance plans by paying 100% of the premiums. If she was terminated from her employment she would not be able to participate in the group insurance plans. Finally, the Claimant was offered and accepted the new contract of employment on June 14, 2019. While it is true that she was not working on that date, she did have an employment relationship with her employer. She was on maternity leave on that date as evidenced by her continuing participation in the group insurance plan and receipt of EI parental benefits at that time. As a result, I find that, because the Claimant accepted the employer's offer to continue in a teaching position before the end of the existing employment relationship there was no genuine severance of the employment relationship. Accordingly, the Claimant has not proven that she met this exception.

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<sup>8</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27

<sup>9</sup> *Oliver v. Canada (Attorney General)*, 2003 FCA 98, *Stone v. Canada (Attorney General)*, 2006 FCA 27

***Teaching on a casual or substitute basis***

[21] 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.<sup>10</sup> While I am not bound by Appeal Division decisions, I agree with this interpretation and will apply it to the Claimant's circumstances.

[22] 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.<sup>11</sup>

[23] The Claimant testified that she was employed to teach full time hours from September 4, 2018, to November 26, 2018. She was replacing a teacher who was on leave. Based on the Claimant's testimony, I find that her employment was sufficiently regular, continuous and pre-determined. As a result, I find that the Claimant has not proven that she was employed on a casual or substitute basis. Accordingly, the Claimant has not proven that she meets this exception.

***Hours from employment other than teaching***

[24] The Claimant confirmed that she did not work in any employment other than teaching. I see no evidence to contradict this. Accordingly, the Claimant has not proven that she meets this exception.

**CONCLUSION**

[25] As stated above there are three exceptions specified in the *Employment Insurance Regulations* that allow teachers to receive EI benefits during the non-teaching period. The

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<sup>10</sup> *K.C. v. Canada Employment Insurance Commission*, AD-17-278

<sup>11</sup> *Dupuis-Johnson v. Canada (Canada Employment and Immigration Commission)*, A-511-95

Claimant's circumstances do not fall within any of the three exceptions. As a result, I find that the Claimant is not entitled to receive EI benefits during the non-teaching period.

[26] The appeal is dismissed.

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

HEARD ON:	November 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. K., Appellant