



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. L. v Canada Employment Insurance Commission*, 2020 SST 275

Tribunal File Number: GE-20-748

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: March 23, 2020

DATE OF DECISION: March 26, 2020

DECISION

[1] The appeal is allowed. The Appellant (Claimant) is not employed in teaching so she is not disentitled from receiving benefits.

OVERVIEW

[2] If you are employed in teaching, you can only receive regular employment insurance benefits during a non-teaching period if you fall within one of three exceptions set out in the *Employment Insurance Regulations* (Regulations).¹

[3] The Claimant works at a Montessori academy. Her employer laid her off on December 20, 2019, and recalled her on January 3, 2020. She requested regular employment insurance benefits during this period under the *Employment Insurance Act*.

[4] The Canada Employment Insurance Commission (Commission) decided it could not pay the Claimant benefits during the non-teaching period because she was employed in teaching and did not fall within one of the exceptions.² This is called a disentitlement.

[5] The Claimant says she does not work as a teacher, but rather as a Montessori guide, or daycare worker, for preschool children.

[6] I have to decide whether the Claimant was employed in teaching. If she was, I have to decide if she fits within one of the exceptions to the disentitlement.

ISSUES

[7] Is the Claimant's work at the Montessori academy "teaching" as defined in the Regulations?

[8] If so, do any of the exceptions apply?

¹ S 33 of the Regulations.

² This was a disentitlement under section 33 of the Regulations.

ANALYSIS

[9] A claimant who is employed in teaching for any part of their qualifying period is only entitled to receive benefits during a non-teaching period if they prove, on a balance of probabilities, that they fall within one of three exceptions.³

Is the Claimant “teaching” as defined in the Regulations?

[10] No. The Claimant is not employed in teaching as defined in the Regulations.

[11] 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.⁴

[12] The Commission says that teaching can occur in a pre-elementary setting. I agree with the Commission that teaching as defined in the Regulations includes teaching in a pre-elementary setting.

[13] The Claimant acquired a Montessori diploma by attending a class every Saturday for 10 months. This is considerably less education than one would normally expect for a teacher, even in a pre-elementary setting.

[14] The Claimant explained her work. She said:

- a) Her employer is not a school board. She is paid on an hourly basis.
- b) There are about 20 children where she works.
- c) There are two other childcare workers. One has a Montessori diploma, like her, and the other has a diploma in early childhood education.
- d) The children in the room range from 2½ to 5½ years.

³ The exceptions are: a) their contract of employment for teaching has terminated; b) their employment in teaching is on a casual or substitute basis; or c) they qualify to receive benefits in respect of employment in an occupation other than teaching. The relevant provisions are in s 33 of the Regulations.

⁴ S 33(1) of the Regulations. See also *Canada (Attorney General) v Lafrenière*, 2013 FCA 175.

- e) She is responsible for three or four children aged 2½ to 3½.
- f) When a child advances to the next age group is not based on academic achievement.
- g) There are no desks in the room, only small tables and chairs.
- h) The room has a play kitchen, and other toys, such as blocks.
- i) Her employer provides the children with their meals and snacks.
- j) The children take naps every afternoon.
- k) She provides daily reports to the parents about their daily activities, what they ate and how long they slept. She does not do academic reporting.
- l) There is no instruction in reading, writing or arithmetic. She sings songs and nursery rhymes with the children. She helps with day-to-day activities, such as how to open and close a bottle or box, or how to use a lock and key. She helps them learn about self-care, including toilet training. Sometimes she changes diapers.
- m) The employer gives her a list of possible activities to do with the children. She selects what to do daily based on which children are there.

[15] I find the occupation of teaching requires an element of academia, which is not present in the Claimant's work. Her work is more in line with that of a daycare worker than that of a teacher. The instruction the Claimant provides is to help the toddlers in her care with activities of daily living, not academic learning.

[16] The Commission argues the Claimant said she was a Montessori certified "teacher." The Claimant says she may have used the word teacher, but she is a Montessori "guide" or daycare worker.

[17] While the Claimant may have called herself a teacher, she has repeatedly said that she is not doing the work of a teacher, and that daycare workers are often called teachers. I agree with the Claimant that many people refer to daycare workers as teachers.

[18] The Commission says the Claimant is a teacher because the employer's website says she is a Casa Montessori Teacher. I am not persuaded by this argument. Firstly, just because the website called her a teacher does not mean she is teaching as defined in the Regulations. Secondly, the Commission did not provide a copy of the employer's website, so I cannot see the context of the statement. Thirdly, the Claimant has testified that the employer has since changed her title on the website from Casa Montessori Teacher to Casa Montessori Guide. This is in line with the Montessori philosophy that her role is to guide children as they learn from activities and other children. The Claimant provided evidence to show that this is the Montessori philosophy.⁵

[19] The Commission says the Claimant is teaching because she develops lesson plans, instructs the classroom, evaluates students, and issues report cards, which are the duties and responsibilities of those who teach. I agree that a teacher would normally do these activities, but I find the Claimant does not do these things.

[20] I accept the Claimant's testimony that she does not teach an academic program, but guides toddlers in their everyday activities. Her work does not involve any aspect of teaching in the usual sense of the word. She works in a large room that is set up with toys like a daycare, not a classroom. There are small tables and no desks.

[21] I considered that the Commission's notes from January 3, 2020,⁶ state that the Claimant said she evaluates students and does report cards. However, I prefer the more detailed evidence the Claimant gave to the Commission by telephone on January 29, 2020,⁷ and to the Tribunal during her testimony and in writing.⁸ I prefer the later evidence that her work resembles that of a daycare worker because it is consistent with her application for benefits where she said she was a childcare worker in a daycare,⁹ and her record of employment that shows she is an early childhood educator (not a teacher).¹⁰ More importantly, her description of her work is more

⁵ See page GD5-3.

⁶ See page GD3-24.

⁷ See page GD3-30 to 31.

⁸ See page GD2-7 and GD5.

⁹ See page GD3-10.

¹⁰ See page GD3-22.

consistent with tending to the daily needs of a child 2½ to 3½ years old than to providing academic instruction.

[22] It is for all these reasons, I find the Claimant is not employed in teaching.

[23] Since the Claimant is not employed in teaching, she is not disentitled from receiving benefits during the time she was laid off for the Christmas break. This also means that I do not have to consider whether she falls within any of the exceptions.

CONCLUSION

[24] The Claimant is not employed in teaching. She is not disentitled from receiving benefits.

[25] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	March 23, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. L., Appellant