



Citation: *MM v Canada Employment Insurance Commission*, 2021 SST 331

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## Decision

**Appellant:** M. M.  
**Representative:** Fraser Lee Koval's'kyj

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (417255) dated March 10, 2021  
(issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** Videoconference  
**Hearing date:** May 25, 2021  
**Hearing participants:** Appellant  
Appellant's representative (Appellant's partner)

**Decision date:** June 1, 2021  
**File number:** GE-21-603

## Decision

[1] I am allowing the appeal. The Claimant has shown that she meets the exception to receive regular Employment Insurance (EI) benefits during the non-teaching periods.

## Overview

[2] The Claimant was working in non-teaching and teaching positions between June 9, 2019, and November 21, 2020. Specifically, she worked as a supply support staff person for the school board and a substitute, on-call casual teacher before entering into a long-term occasional (LTO) teaching contract effective November 23, 2020.

[3] During the school break in December 2020, the Claimant asked to be paid EI benefits. She established a claim (benefit period) effective December 20, 2020. The Commission decided that the Claimant could not be paid EI benefits because her teaching contract continued over the course of the school break.

[4] The Commission maintained their decision upon reconsideration. The Claimant appeals to the Social Security Tribunal (Tribunal). She says that before she entered into the LTO teaching contract, she worked as a support staff person from September to mid-November 2020. She says she contributed to EI so the Commission should release what she “has earned.”

## Issue

[5] Has the Claimant met the exception to receive EI benefits during the non-teaching periods?

## Analysis

[6] The general rule is that teachers<sup>1</sup> cannot be paid EI benefits during any non-teaching period of the year.<sup>2</sup> Non-teaching periods are those periods that occur annually

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<sup>1</sup> Section 33(2) of the *Employment Insurance Regulations* (EI Regulations) refers to a “claimant who was employed in teaching”; section 33(1) of the EI Regulations defines “teaching” as “the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school.”

<sup>2</sup> See section 33 of the EI Regulations.

when most people employed in teaching do not work.<sup>3</sup> These periods include periods such as the summer break, Christmas, and semester breaks.<sup>4</sup> Although teachers are not working during a non-teaching period, they are not considered to be unemployed during these periods.<sup>5</sup> Not working is different from being unemployed.<sup>6</sup>

[7] There are a few exceptions to this general rule.<sup>7</sup> One exception says that claimants, who qualify to receive benefits in respect of employment in an occupation other than teaching, are not disentitled from being paid benefits.<sup>8</sup> This is the exception that the parties' dispute in this appeal. The Claimant has to prove that it is more likely than not<sup>9</sup> that the exception applies to her.<sup>10</sup>

[8] I must examine the nature of the Claimant's employment during her qualifying period and determine whether it was in teaching or an occupation other than teaching. If it is in teaching, I must review the employment and the relationship between her and her employer to establish whether her teaching employment was on a casual or substitute basis. If her teaching employment was held on a casual or substitute basis, the exception may be invoked if her employment was predominately on call or casual teaching. This applies whether she loses or maintains her substitute status.<sup>11</sup> If her employment is in an occupation other than teaching, I must determine whether she qualifies for EI benefits based on the non-teaching employment.

### **Did the Claimant work in an occupation other than teaching?**

[9] Yes. I find the Claimant primarily worked in an occupation other than teaching during her qualifying period.

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<sup>3</sup> See section 33(1) of the EI Regulations.

<sup>4</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>5</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>6</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>7</sup> See section 33(2) of the EI Regulations.

<sup>8</sup> See paragraph 33(2)(c) of the EI Regulations.

<sup>9</sup> The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>10</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>11</sup> *Blanchet v Canada (Attorney General)*, 2007 FCA 377.

[10] The qualifying period is generally the 52 weeks before your benefit period would start.<sup>12</sup> The qualifying period is the period considered when determining the Claimant's hours of insurable employment.<sup>13</sup> The Commission decided to extend the Claimant's qualifying period to be from June 9, 2019, to December 19, 2020. The Claimant does not dispute that this is her qualifying period.

[11] The Claimant says that the exception applies to her situation because she qualifies for EI benefits with her non-teaching employment. The Claimant states that the first time she ever worked as a substitute teacher was on November 17, 2020. She worked as a substitute on-call teacher for three consecutive days ending November 19, 2020.<sup>14</sup>

[12] Then on November 23, 2020, the Claimant worked as an on-call teacher at a different school. After working thirteen consecutive days, she accepted the contract offer to work as a LTO teacher for that position. She says the employer made the contract retroactive to November 23, 2020. She asserts that she should not be disentitled from receiving EI benefits because she only worked in the contract LTO teaching position for three weeks before starting her EI claim on December 20, 2020. She says her employment with the school district prior to November 17, 2020, was primarily as a supply support person and not as a teacher.

[13] The Commission says that the exception does not apply to the Claimant. The Commission submits that the Claimant has failed to show how many hours she worked in an occupation other than teaching. They say that her employment from November 23, 2020, is sufficiently regular and does not meet the definition of casual or substitute teaching. They determined that the Claimant's employment contract had not terminated so she is disentitled from receiving EI benefits during the non-teaching periods.

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<sup>12</sup> See section 8 of the *Employment Insurance Act* (EI Act).

<sup>13</sup> Throughout the remainder of this decision, when I refer to hours, I am referring to hours of insurable employment.

<sup>14</sup> The Claimant provides a letter from the principal of the school confirming her casual teaching dates at page GD17-7.

[14] Upon review of the Records of Employment (ROEs)<sup>15</sup> on file, the Claimant states that she did not work for the municipality during her qualifying period. She says she received payment from the municipality in June 2019 for her vacation pay. She agrees that it appears that the last pay listed on the ROE is for statutory holiday pay for July 1, 2019.

[15] The Claimant states she predominantly worked for the school board as a supply support person. This is when she was working on a casual or substitute basis in a non-teaching position. The Claimant explained in detail how she was working as a supply support person (lifeguard instructor) from September 17, 2020, until November 16, 2020. The Claimant says she was “supporting students and staff in unit-C” and was not teaching. She says the employer called her to work in this casual non-teaching position through the same call-out program used for casual teaching positions.<sup>16</sup>

[16] The Claimant states that the first time she worked as an on-call teacher was November 17, 2020. She worked as an on-call substitute teacher for three days from November 17, 2020, until November 19, 2020. She argued that her employer failed to pay her for these three days until 2021. She provides a letter from the school principal who supports she worked as a substitute teacher these days.<sup>17</sup> She also provides a copy of her call-out list and her pay stub, which shows she did work but did not receive payment for that work until February 4, 2021.

[17] I find that the Claimant has proven that her hours of employment during her qualifying period are as listed below. I have considered the hours listed on her pay stubs and the times on the assignment list when considering she worked 7 hours for a full working day. I recognize that she only worked 4 hours on October 20, 2020, and 5 hours on November 10, 2020.<sup>18</sup> The total of 373 hours matches the total hours the school board lists on the ROE.<sup>19</sup>

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<sup>15</sup> See pages GD6-2 to GD6-5.

<sup>16</sup> The Claimant submits a screenshot of the call-out software displaying each call out at pages GD17-9 to GD17-10.

<sup>17</sup> See the GD17 documents.

<sup>18</sup> See the start and end times for each assignment listed on pages D17-9 to GD17-10.

<sup>19</sup> The ROE

<b>Position</b>	<b>Dates of Employment</b>	<b>Hours</b>
On-call Support	Sep 17, 2020, to Nov 13, 2020	212 Hours
Casual Teacher	Nov 17, 2020, to Nov 19, 2020	21 Hours
Contract Teacher	Nov 23, 2020, to Dec 18, 2020 (20 Days on contract x 7 hours)	140 Hours
	<b>Total hours</b>	<b>373 Hours</b>

[18] Based on the type of employment and hours worked, as set out above, I find the Claimant has proven that her employment during her qualifying period is predominantly in an occupation other than teaching. I will now consider whether the Claimant qualifies to receive benefits in respect of her non-teaching employment.

### **Does the Claimant qualify for benefits based on her non-teaching employment?**

[19] Yes. I find the Claimant qualifies for EI benefits based on her non-teaching employment. This means she meets the exception requirements and is not subject to a disqualification during the non-teaching periods.

[20] To qualify for regular EI benefits, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>20</sup> As stated above, the Claimant’s qualifying period is June 9, 2019, to December 19, 2020.

[21] The required number of hours depends on the unemployment rate in your region.<sup>21</sup>

[22] In response to the COVID-19 pandemic, parliament made amendments to the EI Act.<sup>22</sup> They established temporary measures to facilitate access to EI benefits for claims made on or after September 27, 2020.<sup>23</sup> These temporary measures deem claimants to have additional hours in their qualifying period. Specifically, claimants who have applied

<sup>20</sup> See section 7 of the EI Act.

<sup>21</sup> See section 7(2)(b) of the EI Act and section 17 of the EI Regulations.

<sup>22</sup> Subsection 153.5 of the EI Act.

<sup>23</sup> See section 153.17 of the EI Act.

for regular EI benefits will have an additional 300 hours.<sup>24</sup> Claimants can only have their hours increased one time.

[23] Based on the Claimant's address on her application for EI benefits, I find that her region is Toronto. She submitted her application on December 19, 2020, and the regional rate of unemployment at that time was 13.1%. This means that the Claimant needs to have at least 420 hours in her qualifying period to qualify for EI benefits.<sup>25</sup>

[24] In this case, the Claimant has more than the required 420 hours in her qualifying period. Specifically, she has 212 hours of non-teaching employment during her qualifying period. Under the temporary measures, she may get an increase of 300 hours bringing her total up to 512 hours (212 + 300 = 512 hours). This means she has enough hours to qualify for EI benefits based on her non-teaching employment.

### **Does the Claimant meet the exception to receive EI benefits during the non-teaching periods?**

[25] Yes. I find that the Claimant has proven she meets the exception to receive EI benefits during the non-teaching periods.<sup>26</sup> This is because she has enough hours to qualify for EI benefits based on her non-teaching employment. Accordingly, the Claimant is not disentitled from receiving benefits during the non-teaching periods.

### **Conclusion**

[26] The Claimant has proven she meets the exception so she is not disentitled from being paid benefits during the non-teaching period. This means I am allowing the appeal.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>24</sup> This is provided under paragraph 153.17(1)(b) of the EI Act.

<sup>25</sup> Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

<sup>26</sup> See paragraph 33(2)(c) of the EI Regulations.