



[TRANSLATION]

Citation: *MD v Canada Employment Insurance Commission*, 2022 SST 600

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

Decision

Appellant: M. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal Canada Employment Insurance Commission
reconsideration decision (454914) dated February 22,
2022 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: May 25, 2022
Hearing participant: Appellant
Decision date: May 31, 2022
File number: GE-22-1161

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant's teaching job didn't end on December 17, 2021, and that he isn't entitled to receive benefits between December 22, 2021, and December 31, 2021.

Overview

[3] The Appellant is a teacher with the Ottawa Catholic School Board. He says that he is a substitute teacher and that he accepted an offer to replace another teacher for the 2021–2022 school year. On December 18, 2021, he applied for Employment Insurance (EI) benefits for the 2021 Christmas non-teaching period and indicated that his date of return was January 3, 2022.

[4] On February 22, 2022, the Canada Employment Insurance Commission (Commission) told the Appellant that it wasn't able to pay him benefits during the non-teaching period, from December 20, 2021, to December 31, 2021.

[5] I have to decide whether the Appellant was employed in teaching during that period.

Issues

[6] Did the Appellant have a teaching employment contract?

[7] Did that contract end on December 17, 2021?

[8] Was the Appellant teaching on a casual or substitute basis?

[9] Does the Appellant qualify for benefits for a job in an occupation other than teaching?

Analysis

Did the Appellant have an employment contract and, if so, did that contract end on December 17, 2021?

[10] The non-teaching period occurs annually, at regular or irregular intervals, and no work is performed during this period by a significant number of people employed in teaching.¹ Generally, the school year runs from September to June, and July and August are the main non-teaching periods.

[11] There may be other non-teaching periods during the school year. For example, during the Christmas break and spring break.

[12] During a non-teaching period, a teacher isn't entitled to receive benefits, other than maternity or parental benefits. But, if one of the following conditions applies to a teacher's situation, they may receive EI benefits:

- The teacher's employment contract has ended.
- Their teaching was on a casual or substitute basis and/or during the qualifying period.
- The employee had enough hours of insurable employment in an occupation other than teaching to qualify for EI benefits.

[13] I note that teachers whose contracts are renewed for the next school year before the end of their teaching contracts, or shortly afterwards, maintain their employment relationship because their employment continues.²

[14] Continuity of employment is the key element in determining whether a job has ended.³ Short of a genuine severance of the employment relationship, a teacher won't be entitled to receive benefits during the non-teaching period.⁴

¹ Section 33(1) of *the Employment Insurance Regulations* (Regulations).

² *Oliver*, 2003 FCA 98; and section 33 of the Regulations.

³ *Stone v Canada (Attorney General)*, 2006 FCA 27.

⁴ *Freddy Giammatei et al.*, A-664-01; *Charlotte Oliver et al. v Canada (Attorney General)*, 2003 FCA 98; and *Canada (Attorney General) v Robin*, 2006 FCA 175.

[15] On August 7, 2021, the employer, the Ottawa Catholic School Board, sent the Appellant a job confirmation letter for the September 2, 2021, to June 30, 2022, school year.⁵

[16] That letter says:

This is to confirm your employment as a **long-term** occasional teacher

[Emphasis added]

[17] So, the employer offered the Appellant a full-time job for the 2021–2022 school year, or until the teacher he was replacing came back, or for as long as the employer needed his services. And the Appellant accepted this job for the 2021–2022 school year.

[18] At the hearing, the Appellant argued that he was a substitute and not a teacher and that this letter wasn't a genuine employment contract. He explained that the employer could end his job during the school year and that this is what happened on February 4, 2022. The employer allegedly ended the agreement because there weren't enough registrations.

[19] The Commission says that the Appellant presented a full-time job offer and that all that is required to show the existence of an employment contract is proof that the employee has gone back to work after the non-teaching period. So, the Commission argues that the employment relationship continued and that the Appellant can't receive EI benefits, since there was no genuine severance of the employment relationship during the non-teaching period.

[20] The Appellant's situation shows continuity of the employment relationship. The Appellant accepted the employer's job offer for the 2021–2022 school year and, from the time he left for the non-teaching period, on December 17, 2021, he knew he would be going back his job on January 3, 2022. So, the Appellant was in a non-teaching

⁵ GD3-28.

period for the disentanglement period imposed by the Commission, from December 22, 2021, to August 31, 2021.⁶

[21] The Appellant had a teaching contract between September 2, 2021, and June 30, 2022, within the meaning of the *Employment Insurance Regulations* (Regulations), and that contract didn't end on December 17, 2022. The Appellant also confirms that he went back to work as planned on January 3, 2022, after the non-teaching period.

[22] I find that the Appellant's teaching contract didn't end on December 17, 2021.

Was the Appellant teaching on a casual or substitute basis?

[23] The Commission argues that the Appellant's job, from September 2, 2021, is sufficiently regular, continuous, and predetermined and that it isn't on a casual or substitute basis.

[24] The Appellant argues that he isn't a teacher and that he is considered a substitute. He says he was working in teaching and was employed as a substitute when he applied for benefits.⁷

[25] I have to determine whether the Appellant was teaching on a casual or substitute basis **within the meaning of the Regulations**. [Emphasis added]

[26] As the Commission argues, the criterion for determining whether a job is performed on a casual or substitute basis is continuity of employment. On August 7, 2021, the employer confirmed that the Appellant had accepted the full-time job offer for the 2021–2022 school year.

[27] Although the Appellant may not have the same status as other teachers in his employer's view, within the meaning of the Regulations, he didn't perform his job on a substitute basis. When he stopped working for the non-teaching period on December 17, 2021, the Appellant knew he was still employed and would go back to

⁶ Section 33 of the Regulations.

⁷ GD3-9.

work on January 3, 2022. Between December 18, 2022, and January 2, 2022, there was no severance of the employment relationship. So, the Appellant was employed on a regular basis within the meaning of the Regulations.

[28] I understand from the Appellant's explanations that he wasn't sure whether he would finish the 2021–2022 school year, since the employer could end the agreement if the teacher he was replacing came back. But the facts presented show that his job was performed on a regular basis for the period for which he claimed benefits. The Appellant worked on a regular and continuous basis, and there was no severance of the employment relationship during the non-teaching period in question.

[29] However, the Appellant is entitled to benefits for other non-teaching periods if he proves that he was teaching on a substitute basis and that there was a break in the employment relationship during other non-teaching periods.

[30] As for the non-teaching period in question, I find that the Appellant's teaching job was regular and, although his contract was interrupted by a non-teaching period, the periods of work were determined.⁸

[31] I find that the Appellant wasn't teaching on a casual or substitute basis between December 22, 2021, and December 31, 2021.⁹

Does the Appellant qualify for EI in an occupation other than teaching?

[32] The Appellant didn't declare any hours of insurable employment in another occupation.

[33] The Commission also says there is no evidence that the Appellant was entitled to benefits for a job other than teaching.

⁸ Section 33(2)(b) of the Regulations; and *Arkininstall v Canada (Attorney General)*, 2009 FCA 313.

⁹ *Arkininstall*; and *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

[34] The Appellant hasn't proven that he has enough hours of insurable employment in an occupation other than teaching. As a result, section 33(2)(c) of the Regulations doesn't apply.

Conclusion

[35] The Appellant was in a non-teaching period between December 22, 2021, and December 31, 2021, and there was no severance of the employment relationship during that period.

[36] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section