



Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 1034

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

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (542932) dated October 24, 2022 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Videoconference

Hearing date: April 11, 2023

Hearing participant: Appellant

Decision date: April 18, 2023

File number: GE-22-3821

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't entitled to receive Employment Insurance (EI) sickness benefits from June 30, 2022, to September 5, 2022 (the summer break).

Overview

[3] The Appellant works as a full-time secondary school teacher.

[4] In September 2021, she became ill and went on a leave of absence. Her doctor said she could return to work as of September 6, 2022.

[5] Once her sick leave days and short-term illness benefits ran out, she applied for Employment Insurance (EI) sickness benefits.

[6] The Canada Employment Insurance Commission (Commission) paid her benefits until June 29, 2022, and then stopped. It says it can't pay her benefits during the summer break because it is a non-teaching period.

[7] The law says teachers aren't entitled to benefits during non-teaching periods, unless they meet one of three exceptions.¹ The Commission argues that the Appellant doesn't meet any of the exceptions.

[8] The Appellant says because she was sick during the summer break, and therefore unable to work, she should be entitled to benefits. She argues that it doesn't make sense that claimants receiving other types of benefits² continue to receive them during non-teaching periods, but claimants receiving sickness benefits don't.

[9] She also argues that because the school board was no longer covering its share of her insurance premia and pension contributions once her short term illness benefits

¹ See section 33(2) of the Employment Insurance Regulations (Regulations). I will explain the three exceptions, below.

² Specifically, maternity, parental, caregiver (critical illness), and compassionate care benefits.

ended, her employment was effectively terminated. So, she believes she meets one of the exceptions in the law.

[10] The Appellant also says she wasn't informed by the Commission that they had stopped her benefits. She found this out when she realized she had far less money in her bank account than she expected to have. She says this caused her additional stress and made her existing illness worse.

[11] I must decide if the Appellant was entitled to benefits during the summer break.

Issues

[12] Is the Appellant employed as a teacher?

[13] If so, was she entitled to receive EI sickness benefits for the non-teaching period?

Analysis

[14] The law says that teachers aren't entitled to regular or sickness EI benefits during non-teaching periods.³

[15] Non-teaching periods are any periods in the year where teachers normally don't teach, such as the summer holiday, Christmas, Easter, and semester breaks.⁴

[16] A teacher may be able to receive EI benefits if they meet one of the following three exceptions:

- i. their contract of employment came to an end
- ii. their employment in teaching was on a casual or substitute basis
- iii. they had another job, in addition to teaching, that qualifies them to receive EI benefits⁵

³ See section 33 of the Regulations.

⁴ See *Canada (Attorney General) v Blanchet*, 2007 FCA 377 and *Dupuis-Johnson v Canada (Employment & Immigration Commission)*, [1996] F.C.J. No. 816, 139 D.L.R. (4th) 621 (FCA).

⁵ See section 33(2) of the Regulations.

Was the Appellant employed as a teacher?

[17] I accept as fact that the Appellant was employed as a teacher. She confirmed this in her application for benefits, in her conversations with the Commission, and during her testimony. All of the documentation in the file corroborates (in other words, reinforces) her testimony that she is a teacher.

[18] Both the Appellant and the Commission agree that she is a teacher, and nothing in the file contradicts this.

Is the Appellant entitled to EI sickness benefits during the summer break?

[19] The Appellant is not entitled to EI sickness benefits during the summer break.

[20] The Appellant hasn't shown that she meets any of the exceptions to the rule provided for in the law that says teachers are not entitled to EI benefits during non-teaching periods. And, the summer break is clearly a non-teaching period.

– The Appellant's employment had not been terminated

[21] To determine if the Appellant's employment was terminated, I have to consider whether there was a 'veritable break' in the continuity of her employment. In other words, I have to determine if she was truly unemployed during the summer break.⁶

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

[22] Case law says that there are a number of factors I must look at to decide if there was a break in employment. They include:

- the length of the employment period
- the terms of the employment contract
- the receipt of compensation during the non-teaching period
- the record of employment (ROE) completed by the employer
- other evidence of outward recognition by the employer

[23] The Appellant testified that she had been working for the school board on a continuous basis since 2003. Her application for benefits confirms this.

[24] The Appellant didn't produce an employment contract. She says she isn't sure she ever signed one. However, she testified that she has had permanent status at the school board since 2006.

[25] She explained that because she has had permanent status since 2006, unless she was determined to be redundant (because there was insufficient enrollment for the next school year) she was assured of having a job for the next school year. She said that teachers who were determined to be redundant usually found out by April of the previous school year. And, even when a permanent teacher is determined to be redundant, the school board attempts to find them work in another school or teaching other courses. The Appellant had been determined to be redundant in the past, but the school board always placed her in other positions. So, there has been no break in her employment since 2006.

[26] The Appellant confirmed that she was not determined to be redundant at any time during the 2021-2022 school year. She acknowledged that she was guaranteed to have a job in September, at the start of the 2022-2023 school year, as soon as her health allowed her to return to work.

[27] She also says that her union representative and her lawyer told her the school board had to take her back as soon as her health allowed her to return to work.

[28] The Appellant testified that a portion of her earnings over the 10-month teaching period each year were deferred (in other words, postponed) and paid to her over the summer. So, she received income for 12 months of the year. Her ROE confirms this.

[29] The ROE also indicates that the reason for the separation from employment was illness or injury and that the date of expected recall was unknown. It doesn't say that she wasn't returning.

[30] According to documents filed by the Appellant with her Notice of Appeal, her employer clearly expected that she would be returning to work when her health allowed for it. It considered her to be on a "health paid leave" and then a "health unpaid leave" when her short-term illness benefits ran out. She was told that she would have to ensure that she was a member in good standing with the Ontario College of Teachers (OCT) prior to her re-entry to the classroom. If her return was during the month of January, her OCT fees would be remitted directly by the school board through a payroll deduction.

[31] Considering the factors that case law says I must consider, it is clear to me from the evidence that there was no veritable break in the Appellant's employment with the school board.

[32] She had been continuously employed with the school board for over 15 years.

[33] She was paid over 12 months of the year even though she worked for 10 months of the year.

[34] She was on a temporary leave, and was expected back in the classroom as soon as her health allowed it.

[35] Her employer had no choice but to take her back as soon as she could adequately demonstrate that she was ready to resume work.

[36] Although she was not receiving any pay, she remained on the payroll system.

[37] These facts demonstrate that there was no veritable break in her employment.

[38] The Appellant disagrees. She says that despite being guaranteed a job in September, she was effectively unemployed during the school break because the school board had stopped paying its share of her health, dental, and life insurance premia and its share of the pension contribution.

[39] Inasmuch as she had to assume the entire cost of her insurance coverage, the agreements governing her benefit plan provide for this. She was informed by a benefits manager that under the Employee Life and Health plan (ELHT) negotiated by her union, the Ontario Secondary School Teachers Federation (OSSTF), she is responsible for any premia that are payable during a medical leave.⁷ In essence, this obligation forms part of her conditions of employment and further supports the conclusion that she remained employed.

[40] As for the Appellant's pension contributions, her testimony is that her employer stopped making pension contributions on her behalf once her short term illness benefits stopped. However, documents filed by the Appellant show that she had chosen not to make pension contributions during her leave.⁸ They also show that she had the option to make up these payments when she returned to work.

[41] She confirmed at the hearing that during her medical leave she remained part of the school board's group insurance policy. Normally you lose the benefits of a group insurance policy when you are no longer employed. The fact that she had to assume the entire premium is simply a condition of her employment agreement and one of the terms of the benefit plan. As for the pension, she could recoup the "lost" months that she was on leave by making up the contributions for that period.

⁷ See GD2-14, which says "During this [medical leave], the OSSTF-ELHT rules show that you are responsible for any premiums paid during this period of leave."

⁸ See GD2-15 and GD2-16.

[42] Based on the evidence, I can't conclude that there was a break in her employment. So, this exception doesn't apply to her.

– **The Appellant's teaching was not on a casual or substitute basis**

[43] The Appellant has confirmed that she wasn't a casual or substitute teacher. She had permanent status with the school board. In any event, case law confirms that a teacher who works in a continuous teaching role isn't a casual or substitute teacher, even if they don't necessarily have a permanent full-time teaching position.⁹

[44] The Appellant has been working continuously for the school board since 2003. She has a permanent full-time position.

[45] I find that she clearly isn't a casual or substitute teacher. This exception doesn't apply to her.

– **The Appellant didn't have another job that qualifies her for EI benefits**

[46] The Appellant testified that she didn't have another job. She only worked as a teacher. There is no evidence to contradict this.

[47] So, I accept as fact that she didn't have another job and isn't otherwise qualified to get EI benefits. This exception doesn't apply to her.

So, is the Appellant entitled to benefits during the summer break?

[48] Since none of the exceptions under the law apply to the Appellant, she isn't entitled to EI sickness benefits for non-teaching periods. This means she can't get benefits during the summer break.

[49] The Appellant says this makes no sense. She has demonstrated that she was sick and unable to work during the summer break. Therefore, she isn't in the same position as a teacher who is healthy and able to find a job. And, she was on an unpaid leave and wouldn't be double dipping if she received EI benefits. She argues that her position is more like that of a teacher on parental leave or caring for a sick family

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

member. She says if they are entitled to benefits during non-teaching periods, she should be as well.

[50] I don't disagree with the Appellant that in her circumstances, it makes no sense that she isn't entitled to EI sickness benefits. However, as the Federal Court of Appeal has confirmed, without a legislative amendment entitling claimants who are receiving sickness benefits to continue receiving them during non-teaching periods, I have no choice but to find that she can't get benefits during the summer break.¹⁰

[51] The Appellant referred me to some decisions of the Tribunal.¹¹ She says they support her position that she is entitled to benefits during the summer break.

[52] I commend the Appellant for preparing herself so well for the hearing. I am pleased that she was able to make good use of the resources that the Tribunal makes available to the public to help them understand their rights and prepare their appeals.

[53] However, the cases she refers to are not factually similar to her case. They don't apply to her situation. In all events, I'm not bound by other decisions of the Tribunal. So, these cases don't impact what I've decided.

[54] Finally, the Appellant says that the Commission caused her harm by failing to let her know that it wouldn't be paying her benefits during the summer break. She says this put her in a precarious financial situation and caused her enormous stress.

[55] Although I empathize with the Appellant, I have no authority to provide her with any remedy regarding this. The Commission's failure to advise her that her benefit payments would be suspended during the summer break doesn't allow me to decide that she should receive benefits that she isn't entitled to under the law.

¹⁰ See *Canada (Attorney General) v Taylor*, [1991] F.C.J. No.508, 126 N.R. 345 (FCA), *Canada (Attorney General) v St-Coeur*, [1996] F.C.J. No. 514, 199 N.R.45 (FCA), and *Canada (Attorney General) v Donachey*, [1997] F.C.J. No 579, 213 N.R. 78

¹¹ She referred me to *M P v Canada Employment Insurance Commission*, 2017 SSTGDEI 48, *H R v Canada Employment Insurance Commission*, 2019 SST 1597, and *RH v Canada Employment Insurance Commission*, 2019 SST 519.

[56] I do note that the Commission has apologized for its error. However, I recognize that this doesn't do much for the Appellant.

Conclusion

[57] The appeal is dismissed.

[58] The Appellant isn't entitled to receive EI sickness benefits during the summer break. This is because she is a teacher and can't be paid sickness benefits during non-teaching periods.

Elyse Rosen
Member, General Division – Employment Insurance Section