[TRANSLATION]

Citation: *GB v Canada Employment Insurance Commission*, 2023 SST 1424

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	G. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated July 31, 2023 (GE-23-830)

Tribunal member:	Pierre Lafontaine
Decision date:	October 30, 2023
File number:	AD-23-816

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant*)* is a high school teacher. She got a teaching contract for the 2021–2022 school year. On July 1, 2022, the employer offered her a contract for the 2022–2023 school year. The Claimant accepted this offer the same day.

[3] On February 22, 2023, the Canada Employment Insurance Commission (Commission) told the Claimant that it could not pay her benefits during the non-teaching period from June 29, 2022, to August 22, 2022.

[4] The Claimant asked for a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that there was no break in the Claimant's employment relationship. It determined that the Claimant was not employed on a casual or substitute basis. It found that the Claimant met no exceptions and that she was not entitled to benefits during the non-teaching from June 28 to August 22, 2022.

[6] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. She argues that she would have been entitled to Employment Insurance (EI) if her contract had been awarded later in the summer. She argues that the date the contract was awarded was beyond her control and that the assignment sessions for all school service centres in the province should be standardized. She argues that she received no money between July 7 and September 1, 2022.

[7] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[10] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error on which the appeal might succeed.

[11] I will grant permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[12] The Claimant argues that she would have been entitled to EI if her contract had been awarded later in the summer. She argues that the date the contract was awarded was beyond her control and that the assignment sessions for all school service centres

in the province should be standardized. She argues that she received no money between July 7 and September 1, 2022.

[13] The General Division had to decide on the disentitlement imposed on the Claimant under section 33(2) of the *Employment Insurance Regulations* (Regulations) for the non-teaching period from June 29 to August 22, 2022.

[14] Section 33(2) of the Regulations says that a claimant who was employed in teaching for any part of their qualifying period is not entitled to receive benefits for any week of unemployment that falls in any non-teaching period. The term "any non-teaching period" includes the summer break.

[15] However, section 33(2) of the Regulations contains three exceptions to this general rule. These are three separate exceptions, not one exception with three conditions. These three exceptions are as follows:

a. The claimant's employment contract has ended.

b. Their employment in teaching was on a casual or substitute basis.

c. They qualify to receive benefits for employment in an occupation other than teaching.

[16] The undisputed evidence before the General Division shows that the Claimant worked as a teacher during her qualifying period. She was under a 10-month contract for the 2021–2022 school year. On July 1, 2022, she was offered a contract to teach at the same school in the fall of 2022 for 10 months ending on June 27, 2023. She accepted the offer the same day.

[17] The Federal Court of Appeal has confirmed that casual or substitute teachers who enter into a temporary contract for regular teaching during the school year no longer meet the definition of "casual" or "substitute" within the meaning of section 33(2)(b) of the Regulations, even if they keep their casual or substitute status

with the school board.[1] The exception in section 33(2)(b) emphasizes the performance of the employment and not the status of the teacher who holds it.[2]

[18] In addition, the Federal Court of Appeal has established that a full-time teaching contract for an extended period cannot be considered "casual" or "substitute" within the meaning of section 33(2)(b) of the Regulations.[3]

[19] The evidence shows that the Claimant's teaching job was regular and performed on a continuous and predetermined basis and not on a casual or substitute basis within the meaning of section 33(2)(b) of the Regulations.

[20] I see no reviewable error made by the General Division concerning the interpretation and scope of section 33(2)(b) of the Regulations.

[21] As for section 33(2)(a) of the Regulations, the Federal Court of Appeal has established the applicable legal test: Was there a clear break in the continuity of the Claimant's employment, causing her to become unemployed?

[22] The Claimant relies on the fact that she did not receive any money during the non-teaching period. So, she should receive benefits.

[23] The Federal Court of Appeal has repeatedly held that, even if a teacher is not paid during the non-teaching period, this alone is not enough to conclude that a contract has ended.[4]

[24] A review of the General Division decision shows that it correctly considered whether there had been a genuine break in the continuity of the Claimant's employment that resulted in her unemployment.

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[1] *Arkinstall v Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v Blanchet*, 2007 FCA 377.
[2] *Canada (Attorney General)* v Blanchet, *supra*.
[3] *Arkinstall v Canada (Attorney General)*, *supra*.
[4] *Canada (Attorney General) v Donachey*, A-411-96; *Canada (Attorney General) v St-Coeur*, A-80-95; *Canada (Attorney General) v Taylor*, A-681-90.

[25] The Federal Court of Appeal has confirmed the principle that the exception in section 33(2)(a) of the Regulations is meant to assist teachers whose employment relationship is genuinely severed at the end of the teaching period. Teachers who had their teaching contracts renewed for the new school year before or shortly after the end of their teaching contracts were not unemployed and had continued employment despite the gap between contracts.[5]

[26] The Claimant argues that she would have qualified if she had accepted the offer later in the summer. I must point out that the General Division had a duty to decide the case before it and based on the evidence before it, not based on hypothetical situations.

[27] There is no break in the employment relationship for teachers who expect to return and return to school to teach, even if they did not reach a formal agreement before the fall, as they would not be unemployed during the non-teaching period.[6]

[28] The evidence before the General Division does not show a clear break in the continuity of the Claimant's teaching job.

[29] Considering all the facts of the case and the Federal Court of Appeal's findings, the General Division had no choice but to find that the Claimant did not meet one of the conditions set out in section 33(2)(b) of the Regulations. So, she is not entitled to benefits during the non-teaching period from June 29 to August 22, 2022.

[30] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

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[5] *Oliver et al v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v Robin*, 2006 FCA 175.
[6] *Canada (Attorney General) v Blanchet*, 2007 FCA 377, at para 51.

Conclusion

[31] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division