



Citation: *LG v Canada Employment Insurance Commission*, 2023 SST 26

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

Decision

Appellant: L. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (538937) dated September 29, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: January 10, 2023

Hearing participant: Appellant

Decision date: January 16, 2023

File number: GE-22-3478

Decision

[1] The appeal is dismissed. The Appellant (Claimant) isn't entitled to EI benefits for the 2022 summer break. She hasn't proven that her employment ended within the meaning of the law.

[2] So, the Commission can't pay her EI benefits from July 4, 2022, to September 5, 2022.

Overview

[3] The Claimant is a teacher. She started teaching in May 2019.

[4] During the 2020/2021 school year, she worked two part-time term positions at two school divisions.

[5] During the 2021/2022 school year, she had a full-time position. She started on September 27, 2021, and worked until June 30, 2022.¹ She taught a grade 5/6 split.

[6] On June 7, 2022, she signed a new contract for the 2022/2023 school year. The contract started on September 6, 2022, and ended on December 22, 2022. In December 2022, she signed another contract for the remaining school year. It is to end on June 30, 2023. She is teaching the grade 5/6 split at the same school where she taught last year (2021/2022).

[7] The Claimant applied for EI regular benefits on July 1, 2022.

[8] The Commission looked at her application. It decided that as a teacher she wasn't entitled to EI regular benefits during the 2022 summer non-teaching period.

[9] The Commission decided that the Claimant's teaching contract hadn't truly ended between June 30, 2022, and September 6, 2022.

¹ Her original contract was from September 27, 2021, to December 2021. The contract was extended until March 2022 and extended again until June 30, 2022.

[10] So, it disentitled her from receiving EI benefits from July 4, 2022, to September 5, 2022.²

[11] The Claimant disagrees with the Commission's decision. She says she had two distinct employment contracts; one that ended on June 30, 2022, and another one that started on September 6, 2022.

[12] I have to decide if there was a genuine or true break in her employment between June 30, 2022, and September 6, 2022.

Issue

[13] I have to decide whether, as a teacher, the Claimant can receive EI benefits for the 2022 summer break.

[14] To answer this, I have to decide whether her teaching employment contract was terminated. In other words, was the Claimant truly unemployed?

Analysis

– Teachers and EI regular benefits

[15] The law says that teachers cannot be paid EI regular benefits for non-teaching periods unless they fall within one of three exceptions.³ I will explain these exceptions below.

– The Claimant is a teacher

[16] The Claimant is a teacher. There is no dispute about this.

– Summer breaks are non-teaching periods

[17] Summer breaks are considered non-teaching periods.

² See page GD4-1.

³ Section 33 of the *Employment Insurance Regulations* (Regulations) says that a claimant employed in teaching for any part of their qualifying period is only entitled to received benefits for a week of unemployment that falls within a non-teaching period if they prove, they fall within one of the three exceptions.

[18] The Claimant wants to be paid EI regular benefits for the summer of 2022.

[19] For this to happen, she must prove on a balance of probabilities that she falls within one of three exceptions.

– **The exceptions**

[20] The three exceptions are:

- The teaching was on a casual or substitute basis
- The claimant qualifies to receive EI benefits from non-teaching employment
- The contract of employment for teaching has terminated⁴

[21] The parties agree that the Claimant doesn't fall within the first two exceptions.

[22] The Claimant agrees that she wasn't teaching on a casual or substitute basis. And given the evidence of the term contracts, I find that the first exception doesn't apply.

[23] I asked the Claimant about her non-teaching employment. She confirmed that she had less than 100 hours of insurable employment from her non-teaching job.⁵ She can't qualify for benefits from that job because a claimant needs at least 420 hours to qualify for EI regular benefits.⁶ So the second exception doesn't apply.

[24] This means the exception I have to focus on is whether her teaching employment ended.

– **Was there a veritable break in her teaching employment?**

[25] No. The Claimant didn't have a veritable break in her teaching contracts between June 2022 and September 2022.

⁴ See section 33(2) of the Regulations.

⁵ She verified this during the hearing by looking at her record of employment for that job. See also page GD3-12.

⁶ See section 7 of the *Employment Insurance Act* (Act).

[26] This exception is meant to provide relief to teachers whose employment contracts end. This means there is a genuine termination of the employment relationship. In other words, it is to help teachers who are, in the true sense of the word, “unemployed.” Being unemployed is more than simply not working. The test is whether there is a veritable, in other words, genuine or true, break in the continuity of the claimant’s employment.⁷

[27] The most compelling reason I find there was no veritable break in employment is because the Claimant signed a new contract with the same school division to start in September 2022, **before** her earlier contract ended on June 30, 2022.⁸

[28] I also thought about her benefits. I accept that she didn’t have benefits over the summer break. As she explained, she didn’t have benefits for the 2021/2022 school year because of how her contracts ran.⁹ If she had been entitled to benefits in 2021/2022, those benefits would have continued over the summer.¹⁰

[29] Another indication that her employment wasn’t truly terminated is that her time worked is counted towards her years of experience for pay scale purposes. Also, her pension contributions are carried forward.¹¹

[30] I know the Claimant wasn’t paid during the summer months. But the question isn’t about how or when she was paid, but whether the employment contract ended, and she was truly unemployed.¹²

[31] The Claimant says that she received EI benefits during the summer of 2021. But, from what she told me, the facts were different that summer. The most apparent difference is that during summer 2021, she didn’t know that she would have a position

⁷ See *Bazinet v Canada (Attorney General)*, 2006 FCA 174, specifically, paragraphs 44 and 51, and *Oliver v Canada (Attorney General)*, 2004 FCA 98.

⁸ For example, see page GD3-11.

⁹ She told me this at the hearing.

¹⁰ As per the Claimant’s testimony. See also Supplementary Record of Claim on page GD3-30.

¹¹ See her application form on page GD3-10.

¹² See *Oliver v Canada (Attorney General)*, 2004 FCA 98.

that September. She wasn't hired (either verbally, or in writing) in June 2021 to teach in September 2021.

[32] In any event, it isn't for me to decide whether she was entitled to benefits in 2021. What happened in the past is relevant only to the extent that it sheds light on whether there was a termination of employment during the summer of 2022. My focus must remain on her entitlement to EI benefits for the summer of 2022.

[33] I know the Claimant had two separate written employment contracts. She says she could have gone to work with a different division. But the exception isn't about how many contracts are signed. It is about whether she was genuinely unemployed. And the evidence shows that she was never genuinely unemployed. She had a new contract for the same position with the same school division in September 2022 before her contract ended in June 2022.

[34] I recognize that the Claimant pays into the EI system all year. I know there are few teaching jobs available during the summer months. But to get EI benefits she still has to meet the entitlement criteria.

[35] I understand that the Claimant doesn't have a permanent teaching position. For the years she has been teaching, she has worked from contract to contract. But given the evidence before me, it is clear that she had no true period of unemployment between her contract that ended on June 30, 2022, and the contract that started on September 6, 2022.

[36] Because the Claimant is a teacher and hasn't proven that she falls within one of the three exceptions, the Commission can't pay her EI benefits during the summer break.

[37] This means she is disentitled from receiving EI benefits from July 4, 2022, to September 5, 2022.

Conclusion

[38] The Claimant hasn't proven that she was entitled to receive EI benefits during the non-teaching period from July 4, 2022, to September 5, 2022. This means she is disentitled from receiving benefits then.

[39] I would remind the Claimant that this decision is about the 2022 summer break. Just because she hasn't proven her entitlement this year, doesn't mean that she won't be entitled to EI regular benefits at another time in different circumstances.

[40] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section