



Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 777

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

Decision

Appellant: A. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (557605) dated December 16, 2022 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: June 7, 2023

Hearing participant: Appellant

Decision date: June 8, 2023

File number: GE-23-200

Decision

[1] The appeal is dismissed.

[2] The Appellant is not entitled to employment insurance (EI) benefits during her non-teaching period.

Overview

[3] The Appellant is a teacher with the X School Board (the school board). For the 2021-2022 school year, she worked full-time under a long-term occasional (LTO) teaching contract. Shortly after her LTO contract ended, she accepted an offer from the school board to work full-time on a permanent teaching contract for the 2022-2023 school year.

[4] On July 5, 2022, the Appellant applied for EI benefits. The Respondent (Commission) imposed a disentitlement on her claim because she is a teacher and no benefits can be paid to teachers during a non-teaching period¹. This resulted in an overpayment on her claim².

[5] The Appellant asked the Commission to reconsider its decision. She said she was laid off when her LTO contract ended in June 2022 and had no income over the summer months. She needed EI benefits to help with her expenses until she started her new contract in September 2022. But the Commission did not change its decision.

[6] The Appellant appealed to the Social Security Tribunal (Tribunal). She said she had no income or benefits between the end of her LOT position and the start of her permanent position. She also said there are many seasonal workers and contract

¹ Section 33 of the *Employment Insurance Regulations* (EI Regulations) defines a “non-teaching period” as a school holiday that occurs annually. The Appellant was seeking EI benefits for the summer non-teaching period, which is the school holiday that occurs annually over the summer months of July and August.

² Since the Appellant received EI benefits prior to the imposition of the disentitlement (see her Request for Reconsideration at GD3-30), a Notice of Debt was issued to her (at GD3-28) and she was asked to repay the benefits she received.

teachers who receive EI benefits when they are laid off and know they will be returning to the same job.

[7] The Commission said the Appellant is not entitled to EI benefits between July 11, 2022 and September 5, 2022 because she has not proven she met any of the exemptions in the law that allow teachers to be paid during a non-teaching period³.

[8] I agree with the Commission. These are the reasons for my decision.

Preliminary Matter

[9] At the hearing, the Appellant said she did not want to argue about whether the disentitlement decision was legally correct. She only wanted to make submissions about why she should not have to repay the \$638 in EI benefits she received.

[10] I will first review the disentitlement decision. Then I will address whether the Appellant is liable to repay the overpayment on her claim.

Issues

[11] Is the Appellant entitled to EI benefits during the summer non-teaching period?

[12] If not, is she required to repay the EI benefits she received?

Analysis

[13] The law says that teachers are not entitled to regular EI benefits during non-teaching periods⁴.

[14] There are certain exceptions to this rule. A teacher may be able to receive EI benefits if:

- a) The contract of employment for teaching has been terminated;

³ The exemption conditions are set out in section 33(2) of the EI Regulations.

⁴ Section 33 of the EI Regulations

- b) The employment in teaching was on a casual or substitute basis; or
- c) During the qualifying period⁵, the claimant accumulated enough insurable hours of employment in an occupation other than teaching to qualify for EI benefits⁶.

Issue 1: Is the Appellant entitled to EI benefits during the summer non-teaching period?

[15] No, she is not.

[16] The Appellant was employed as a teacher and has not proven she meets any of the exceptions to the rule prohibiting teachers from receiving EI benefits during a non-teaching period.

a) The Appellant's employment had not been terminated

[17] To determine if the Appellant's employment was terminated, I must consider whether there was a "veritable break" in the continuity of her employment such that she was truly unemployed at the end of her LTO contract⁷.

[18] The Appellant testified that:

- She worked full-time under an LTO contract for the entire 2021-2022 school year.
- She taught at the same school for the entire 2021-2022 school year.
- Her LTO contract ended on June 29, 2022.
- On July 7, 2022 she accepted an offer to return to work full-time at the same school for the 2022-2023 school year, but under a permanent teaching contract starting September 6, 2022 and ending on June 30, 2023⁸.

⁵ The qualifying period is the 52-week period prior to the commencement of a claim for EI benefits.

⁶ Section 33(2) of the EI Regulations.

⁷ See *Stone v. Canada (Attorney General)*, 2006 FCA 27.

⁸ This was confirmed by the employer at GD3-23.

- She was not able to start work or get paid until September 2021, when the school year started.
- This meant she was “out of work” and had no income for July and August 2022.
- She applied for temporary jobs she could do during July and August 2022, such as landscaping work, before returning to her teaching job in September 2022.

[19] The Federal Court of Appeal has found that when a teaching contract ends at the conclusion of a school year and a new contract has been accepted by the teacher, before or shortly after the end of the existing contract, there is no break in the continuity of employment⁹.

[20] The Appellant has not proven a clear cessation in the continuity of her employment with the school board such that her employment terminated on June 29, 2022. Within a week of her LTO contract ending, she had a contractual obligation to return to work at the same school after the summer non-teaching period, and fully intended to do so. There is no evidence she had to re-apply or go through the hiring process anew in order to return to work after the summer non-teaching period. Nor is there any evidence she conducted a *bona fide* job search for **full-time teaching employment** because she believed her employment with the school board had terminated.

[21] I find that the Appellant’s employment in teaching was not terminated, even though she was not working over the summer non-teaching period in 2022.

b) The Appellant’s teaching was not on a casual or substitute basis

[22] To determine if the Appellant’s employment as a teacher was on a casual or substitute basis, I must consider the nature of the employment itself – rather than simply her status with the school board.

⁹ See *Stone, supra*, and also *Bazinet* 2006 FCA 174, *Robin* 2006 FCA 174, and *Oliver* 2003 FCA 98.

[23] The Federal Court of Appeal has said that a teacher who works in a continuous and pre-determined teaching role is not a casual or substitute teacher, even if they do not necessarily have a permanent full-time teaching position¹⁰.

[24] The Appellant testified that she was working full-time at the same school throughout the entire school year.

[25] Since she was working full-time with a daily schedule that was set in September and continued throughout the entire school year, I find that the Appellant was working in a continuous and pre-determined teaching role.

[26] This means she was not a casual or substitute teacher and the exception for such teachers does not apply in her case.

c) The Appellant had no hours of employment in a non-teaching role.

[27] The Appellant testified she had no other employment in the 52 weeks prior to her application for EI benefits on July 5, 2022.

[28] I therefore find that she does not have any hours in a non-teaching role that could go towards qualifying for EI benefits. This means the third exception does not apply in her case.

So is the Appellant entitled to EI benefits for July and August 2022?

[29] No, she is not.

[30] The Appellant does not qualify for any of the exceptions under the law. This means her claim is subject to the law that states teachers are not entitled to regular EI benefits for non-teaching periods.

¹⁰ See *Dupuis-Johnson v. Canada (Canada Employment and Immigration Commission)*, A-511-95.

[31] I therefore confirm the disentanglement imposed on the Appellant's claim for the non-teaching periods specified in the August 3, 2022 decision letter¹¹ (which includes the summer non-teaching period the Appellant was seeking EI benefits for).

[32] The Appellant testified that she knows of other teachers in similar positions who have received EI benefits during the summer non-teaching period. But I cannot comment on other cases. I can only consider the Appellant's situation, and I find she does not qualify for any of the exceptions that would allow her to receive EI benefits during non-teaching periods.

Issue 2: Is the Appellant liable to repay the EI benefits she received?

[33] Yes, she is.

[34] The Appellant is frustrated that her claim was started, she received two (2) weeks of EI benefits and then her benefits were "cancelled" and she has been asked to give the money back.

[35] The Appellant testified that:

- She doesn't agree with the Commission's decision.
- She was out of work from July 1st to September 7th (2022).
- Although she was able to "line up a job" in early July, she was not able to begin work at that job – or get paid – until September.
- EI benefits exist to assist the unemployed. As someone who had no job, no money and no benefits, she was looking for assistance from the EI program.
- She has paid into the EI program "for years" and will continue to do so for the rest of her career. On the one summer that she "had no job and needed their help", the program "completely failed" her.

¹¹ At GD3-26.

- Not only was she “cut off” from continuing to receive EI on August 3rd, she is now being told she must pay back “the small amount” she did receive.
- This is money from tax payers like herself “for times of temporary unemployment” and, therefore, she “should not have to pay back the \$638”.
- This is the only part of the decision that she’s fighting. She doesn’t think she should have to repay any of the EI benefits she received for the summer of 2022.

[36] I acknowledge the Appellant’s disappointment at not being able to receive EI benefits in her time of need. However, entitlement to EI benefits is not based on financial need or how long a claimant has contributed to the EI program. For the reasons set out under Issue 1 above, I have found the Appellant is not legally entitled to EI benefits on her claim.

[37] I also acknowledge her frustration with how her claim was administered. However, I can see how the overpayment may have come about based on the information provided in the application for EI benefits. When the Appellant completed her application on July 5, 2022, she was asked “Have you received a verbal or written offer of employment for the next teaching period?” (GD3-9). She answered “No” (GD3-9). This is an important question. Her answer of “No” allowed her to start receiving EI benefits on her claim.

[38] Two (2) days later, on July 7, 2022, the Appellant accepted an offer of employment for the next teaching period. But she didn’t notify the Commission about this change in her circumstances until July 22, 2022¹². The Commission attempted to reach her without success until August 3, 2022, at which time further fact-finding was conducted¹³ and the disentitlement was imposed. By that time, the Appellant had already received EI benefits on her claim.

¹² See Supplementary Record of Claim at GD3-20.

¹³ See Supplementary Records of Claim at GD3-21 to GD3-25.

[39] But regardless of how the \$638 overpayment came to be, I do not have any discretion to waive, forgive, void or write-off this debt – no matter how compelling the Appellant’s arguments may be. The law simply does not empower me to relieve any claimant from liability for an overpayment¹⁴, and I cannot ignore the law, even if the outcome seems unfair¹⁵.

[40] While I must dismiss her appeal, the Appellant is left with 2 options:

a) She can ask the Commission to consider writing off the debt because of undue hardship¹⁶. If she doesn’t like the Commission’s response, she can file a Notice of Application for judicial review with the Federal Court of Canada¹⁷, but there is a 30-day timeframe for appealing to the Federal Court.

or

b) She can telephone the Debt Management Call Centre at Canada Revenue Agency (CRA)¹⁸ at 1-866-864-5823 and ask about debt relief due to financial hardship¹⁹. She will need to present information about her financial circumstances for consideration.

¹⁴ Sections 43 and 44 of the EI Act establish that a claimant is liable for an overpayment of EI benefits and must repay any EI benefits they received but were not entitled to.

¹⁵ *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141

¹⁶ **Section 56(1)(f)(ii) of the *Employment Insurance Regulations*** gives the Commission broad powers to write off an overpayment when it would cause undue hardship for a claimant to repay it. The Claimant must contact the Commission and specifically refer to section 56 of the *Employment Insurance Regulations* in her request for a write-off.

¹⁷ It is up to the Claimant to investigate the process and take the required steps to appeal to the Federal Court. Application forms are usually available by calling the Courts Administration Service (1-613-992-4238) or by going to a local office of the Courts Administration Service. For a list of local Courts Administration Service offices, go to www.cas-satj.gc.ca and click on Registry Office.

¹⁸ CRA collects overpayment debts on behalf of the Commission.

¹⁹ The telephone number is also found on the Notice of Debt and account statements sent to the Claimant for the overpayment.

Conclusion

[41] The Appellant is a teacher and has not proven her entitlement to EI benefits during the summer non-teaching period.

[42] I cannot write-off the overpayment on her claim.

[43] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section