



Citation: *DF v Canada Employment Insurance Commission*, 2023 SST 1914

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

## Decision

**Appellant:** D. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (544606) dated October 21, 2022 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** March 29, 2023

**Hearing participant:** Appellant

**Decision date:** May 2, 2023

**File number:** GE-22-3609

## **Decision**

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that she is entitled to Employment Insurance (EI) benefits during the non-teaching periods from July 4 to September 5, 2022, December 19 to 30, 2022, and March 13 to 17, 2023.

## **Overview**

[3] The Appellant worked as a long-term occasional (LTO) teacher with a school board. Her contract ended on June 30, 2022. So, she applied for EI benefits. In her application for benefits, she said she accepted a permanent contract offer on April 5, 2022, to start on September 6, 2022.

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving EI benefits, because no benefits can be paid to teachers during a non-teaching period.

## **Matter I have to consider first**

### **The Appellant sent post-hearing documents to the Tribunal**

[5] At the hearing, the Appellant referred to a written offer of a permanent teaching job. I asked her to send this and possibly two other documents to the Tribunal after the hearing. Since she referred to them at the hearing, I will consider the two documents she sent after the hearing.

## **Issue**

[6] Is the Appellant entitled to receive EI benefits during the non-teaching periods from July 4 to September 5, 2022, December 19 to 30, 2022, and March 13 to 17, 2023?

## Analysis

[7] The general rule is that teachers<sup>1</sup> can't be paid EI benefits during any non-teaching period of the year.<sup>2</sup> Non-teaching periods are those periods that happen every year when most people employed in teaching don't work.<sup>3</sup> These include periods such as the summer break, Christmas, and semester breaks.<sup>4</sup>

[8] Teachers aren't working during non-teaching periods. But they aren't considered to be unemployed during these periods. Not working is different from being unemployed.<sup>5</sup>

[9] There are a few exceptions to this general rule.<sup>6</sup> The Appellant has to prove that it is more likely than not that one of the exceptions applies to her.<sup>7</sup> I will look at these exceptions below to decide if the Appellant is entitled to EI benefits during non-teaching periods.

### Has the Appellant's teaching contract terminated?

[10] The Appellant hasn't shown that her teaching contract terminated.

[11] The onus is on the Appellant to show that the contract has terminated.<sup>8</sup>

[12] There may be time between two contracts when a teacher isn't under contract. But this doesn't mean that the relationship between the teacher and their employer has

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<sup>1</sup> Section 33(2) of the Employment Insurance Regulations (EI Regulations) refers to a "claimant who was employed in teaching"; section 33(1) of the EI Regulations defines "teaching" as "the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school."

<sup>2</sup> See section 33 of the EI Regulations.

<sup>3</sup> See section 33(1) of the EI Regulations.

<sup>4</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>5</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>6</sup> See section 33(2) of the EI Regulations.

<sup>7</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>8</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27.

ended.<sup>9</sup> I have to decide if there was a “veritable break” in the continuity of the Appellant’s employment.<sup>10</sup>

[13] The Commission says the Appellant’s employment relationship continued when she entered into an agreement with her employer following the previous teaching period. It says this means that her contract of employment for teaching wasn’t terminated.

[14] The Appellant says she was unemployed in the summer months and did not officially take the part-time position she was offered until September 1. She says she accepted the offer once she got another contract to get her closer to full-time work.

[15] I find that the Appellant’s contract hasn’t terminated. I find for reasons that follow that the employment relationship with her employer continued.

[16] The Appellant confirmed at the hearing that she worked under a LTO contract from September 2021 to the end of February 2022, and then another contract from March 2022 to the end of the school year in June 2022. She said she worked full-time, five days a week replacing teachers who were on maternity leave.

[17] In her application for benefits, the Appellant gave details of an offer of a new contract. She said she got a written offer on April 5, 2022, for a permanent teaching job to start on September 6, 2022. She said she accepted the offer on the same day.

[18] The Appellant asked the Commission to reconsider its initial decision in a form dated August 25, 2022. She said the new position she was offered was only part-time. She added that she would not be paid for that position until it starts on September 6, 2022.

[19] The Appellant spoke to the Commission after her request for reconsideration. The notes show that she said the paperwork for the permanent teacher position wasn’t

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<sup>9</sup> *Bazinet v. Canada (Attorney General)*, 2006 FCA 174; *Canada (Attorney General) v. Robin*, 2006 FCA 175.

<sup>10</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27; *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

finalized until the beginning of September 2022. She said in her notice of appeal that as of September 20, 2022, she was now a full-time employee.

[20] I asked the Appellant about the permanent teaching job she was offered. She said because she was already in a LTO contract, she declined the position. She explained that her name was placed on a supernumerary list created by the school board that could potentially be used to hire teachers for full-time permanent positions.

[21] The Appellant testified that the school board decided that it would revisit permanent offers in the summer months. She said a principal contacted her in August 2022, with a job offer that she accepted. She started work on September 1, 2022.

[22] The Appellant attached a letter to her notice of appeal. It confirms that she was a part-time elementary teacher from September 1 to 19, 2022, and a permanent full-time teacher as of September 20, 2022.

[23] I again asked the Appellant about what she said in her application for benefits, that she was offered and accepted a permanent job on April 5, 2022. She said there wasn't an option to say she was waiting for an offer. She suggested that maybe she had answered in this way because she had accepted to be on the supernumerary list. She insisted that she did not accept a permanent position.

[24] I asked the Appellant to send the following documents to clarify her testimony:

- the April 5, 2022, letter that she referred to in her application for benefits
- any contract or offer related to her work from September 1 to 19, and
- any correspondence she has about the supernumerary list.

[25] After the hearing, the Appellant sent the Tribunal text from an email about the supernumerary list. She also sent another letter about the teaching positions she started in September 2022.

[26] I accept as fact that the Appellant worked under a teaching contract until it ended on June 30, 2022. I also accept that she didn't work or have income in July and August

2022. But that isn't enough for me to find that her contract terminated on June 30, 2022. To decide if the non-teaching period in July and August 2022 was a "veritable break" in the Appellant's employment, I have considered several factors.

[27] The Appellant said in her application for benefits that she contributes to a pension plan that carried over from year to year. She also said her previous teaching experience is recognized for seniority purposes. But she said she doesn't get benefits during non-teaching periods.

[28] Although the text of the email the Appellant sent the Tribunal isn't dated, I find that it is likely the offer she referred to in her application for benefits. This is consistent with her testimony. But I also find that along with the carry-over of pension contributions and seniority, it shows that the employment relationship with her employer continued. It says that as permanent positions become available, the Appellant will be contacted.

[29] The updated letter from her employer that the Appellant sent the Tribunal refers to the supernumerary list. It says the Appellant was "hired to a New Hire Pool (Supernumerary List) as of March 21, 2022". The Appellant testified that her employer told her she would be on the list and would be one of the first to be considered for a permanent position. She added that the employer reassured her that come September, she would hopefully be placed in a permanent position.

[30] I find that the updated letter further shows the continued employment relationship between the Appellant and her employer. The Appellant testified that it wasn't until August 2022 that a principal contacted her to offer her a permanent position. But I find that being hired to the New Hire Pool and being one of the first to be considered for a permanent position supports that there was no veritable break in her employment.

[31] Based on the above, I find the Appellant's employment with her employer is the same as teachers employed on a permanent basis, who don't normally work in the summer non-teaching period. So, while she wasn't working in July and August, I don't find that she was unemployed within the meaning of the law.

[32] The Appellant agrees that she isn't entitled to EI benefits in the non-teaching periods from December 19 to 30, 2022, and from March 13 to 17, 2023. I see no evidence to contract this. I don't find that she was unemployed within the meaning of the law in these periods either.

[33] Based on the above, I don't find that the Appellant has shown that her contract with the employer has ended.

### **Was the Appellant working in teaching on a casual or substitute basis?**

[34] The Appellant was working on a regular or full-time basis.

[35] If a claimant's work in the teaching during the qualifying period is on a casual or substitute basis, they can get EI benefits. But the work must have been "predominantly or entirely" on a casual or substitute basis for the exception to apply.<sup>11</sup> I find this interpretation persuasive.

[36] The Appellant said she had two different contracts in the 2021/2022 school year. She testified that in each, she was replacing teachers and was working full-time hours, five days a week.

[37] The Appellant's employer issued a record of employment (ROE) showing that the Appellant worked from September 7, 2021, to June 30, 2022. I find that the earnings listed on the ROE support the Appellant's testimony that she worked full-time hours in the periods covered by the two contracts. So, I find that she worked on a regular basis. I don't find that her work was predominantly or entirely on a casual or substitute basis.

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

[38] The Appellant does not qualify for EI benefits in an occupation other than teaching.

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<sup>11</sup> *K. C. v. Canada Employment Insurance Commission*, AD-17-278

[39] The Appellant testified that she had worked only for the school board in the one year before she applied for EI benefits. I see no evidence to contradict this. So, I don't find that the Appellant qualifies for EI benefits in an occupation other than teaching.

### **So, is the Appellant entitled to EI benefits in the non-teaching periods?**

[40] Based on my findings above, I find that the Appellant hasn't shown that she meets one of the exceptions to get EI benefits in the non-teaching periods from July 4, 2022, to September 5, 2022, December 19 to 30, 2022, and March 13 to 17, 2023.

### **Conclusion**

[41] The Appellant hasn't shown that she meets one of the exceptions to get EI benefits in the non-teaching periods. Because of this, I find that she is disentitled from receiving benefits

[42] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section