



Citation: *DF v Canada Employment Insurance Commission*, 2024 SST 99

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. F.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision under appeal: General Division decision dated May 2, 2023
(GE-22-3609)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference
Hearing date: November 8, 2023
Hearing participants: Appellant
Respondent's representative

Decision date: January 30, 2024
File number: AD-23-418

Decision

[1] The appeal is dismissed. The General Division did not make any reviewable errors.

Overview

[2] The Appellant, D. F. (Claimant), was employed as a long-term occasional (LTO) teacher. Her contract ended on June 30, 2022, and she applied for employment insurance (EI) benefits. The Claimant returned to work as a part-time teacher on September 6, 2022, and became a full-time teacher on September 20, 2022.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant, as a teacher, could not be paid benefits during a non-teaching period.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant did not show that her contract had terminated. This meant that she did not meet any of the exemptions in the law that would allow benefits to be paid to her during a non-teaching period.

[5] The Claimant is now appealing the General Division decision. She argues that the General Division based its decision on important factual errors.

[6] I am dismissing the Claimant's appeal. The General Division did not make any reviewable errors in its decision. The Claimant is not entitled to employment insurance (EI) benefits for the non-teaching period.

Issues

[7] The issue in this appeal is:

- a) Did the General Division base its decision on important factual errors when it found that the Claimant's contract had not terminated?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

The General Division did not make any reviewable errors

– Background

[9] The Claimant is a teacher. She worked under LTO contracts from September 2021 to the end of February 2022, and from March 2022 to the end of June 2022.² On July 4, 2022, the Claimant applied for regular EI benefits.³

[10] In her application for benefits, the Claimant indicated that she had been working on a ten-month contract and had been offered a permanent contract with the same

¹ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² General Division decision at para 16.

³ GD3-15

school board to begin on September 6, 2022.⁴ She said the offer was made on April 5, 2022, and that she had accepted the offer.⁵

[11] The Commission decided that the Claimant could not be paid benefits as a teacher, during a non-teaching period.⁶

[12] Under the *Employment Insurance Regulations* (Regulations), a teacher employed in teaching during the qualifying period, is not entitled to receive EI benefits for weeks of unemployment during a non-teaching period.⁷ The summer months when school is not ordinarily in session is considered a non-teaching period.

[13] There are three exceptions to this rule in the Regulations. Only one of the exceptions is at issue in this appeal: whether the Claimant's contract of employment for teaching had terminated.⁸

– The General Division decision

[14] In its decision, the General Division summarized the key principles from decisions by the Federal Court of Appeal.⁹ In deciding whether the Claimant's contract had terminated, the General Division noted that it had to determine whether there had been a veritable break in the continuity of her employment.¹⁰

[15] The General Division found that the Claimant's contract had not terminated.¹¹ It found that there was no veritable break in the Claimant's employment during the months of July and August 2022.¹²

⁴ GD3-8

⁵ GD3-9

⁶ GD3-21

⁷ See section 33(2) of the *Employment Insurance Regulations*.

⁸ The other exceptions apply when a claimant's employment in teaching was on a casual or substitute basis and when a claimant qualifies to receive benefits because of employment in a job other than teaching.

⁹ General Division decision at para 10 to 12.

¹⁰ General Division decision at para 12.

¹¹ General Division decision at para 15.

¹² General Division decision at para 36.

[16] The General Division relied on the following findings to support its decision that the Claimant's employment relationship with her employer continued:

- The Claimant contributes to a pension plan that carries over from year to year;¹³
- The Claimant's experience is recognized for seniority purposes;¹⁴
- The Claimant received an email from her employer saying that she would be considered for permanent positions as they became available;¹⁵ and
- A letter from her employer said that the Claimant was hired to a New Hiring Pool (Supernumerary List) as of March 21, 2022, and she was told that she would be one of the first to be considered for a permanent position.¹⁶

[17] The Claimant had indicated on her application form that she had accepted an offer for a permanent contract to begin in September 2022. She told the Commission on reconsideration that the contract was for part-time employment and that she would not be paid until it started.¹⁷

[18] The General Division asked the Claimant about the permanent job that she was offered. She said that she turned it down because of her LTO contract and that she was placed on a supernumerary list. She was told that the permanent positions would be considered over the summer. The Claimant accepted an offer in August 2022. The Claimant worked part-time from September 1 to 19, and full-time as of September 20, 2022.¹⁸

¹³ General Division decision at para 27.

¹⁴ General Division decision at para 27.

¹⁵ General Division decision at para 28.

¹⁶ General Division decision at para 29.

¹⁷ General Division decision at para 18.

¹⁸ General Division decision at paras 20 and 21.

– **The Claimant's appeal**

[19] The Claimant argues that the General Division made important factual errors in its decision. She says that her contract ended, and she was not guaranteed a job in September. This is the same situation that she has been in for the past seven or eight years.¹⁹

[20] The Claimant argues that her Record of Employment and the letters from her employer support that her contract had ended. She says that she made an error in her application for benefits and that she was in a hiring pool, as she had been in previous years. She says that it was her job to look for and apply for positions and she did not know when she would be returning to work.²⁰

[21] The Claimant argues that the relationship with her employer over the summer months was the same as it had been for the previous eight years. She said that her contract ended and that she had to find a new position in September. She previously received EI benefits when her contracts ended. The Claimant says that she did not receive pay or benefits over the summer months.²¹

– **The General Division did not base its decision on factual errors**

[22] I can intervene only if the General Division based its decision on error of fact. In addition, the factual error must have been made perversely, capriciously, or without regard for the material before it.²² I cannot intervene in order to weigh the evidence differently to come to a different conclusion.

[23] The Claimant's arguments largely restate the arguments that she made at the General Division. The General Division acknowledged the Claimant's position that she was not guaranteed a job in September when her contract ended. It accepted that she

¹⁹ AD1-5.

²⁰ AD1-5.

²¹ AD1-5.

²² See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

was not paid during the summer months and that she did not receive benefits during that period.²³

[24] The fact that the Claimant received benefits in previous years when she says that the circumstances were the same is not determinative of the issue before the General Division.

[25] The General Division considered the Claimant's testimony, and the supporting documents that she sent in. It acknowledged her arguments and explained, with reference to the evidence, why it found that her contract had not ended and she did not meet the exception in the Regulations.

[26] I find that the General Division considered the relevant evidence. It applied the proper legal test and made findings based on the evidence before it. The General Division did not base its decision on factual errors made perversely, capriciously, or without regard for the material before it.

Conclusion

[27] The appeal is dismissed. The General Division did not base its decision on any important factual errors.

Melanie Petrunia
Member, Appeal Division

²³ General Division decision at para 26.