Citation: *MI v Canada Employment Insurance Commission*, 2025 SST 95

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. I.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (687787) dated October 28, 2024 (issued by Service Canada)

Tribunal member:	Linda Bell
Type of hearing:	Teleconference
Hearing date:	January 2, 2025
Hearing participant:	Appellant
Decision date:	January 13, 2025
File number:	GE-24-3959

Decision

[1] M. I. is the Appellant. I am dismissing her appeal.

[2] The Appellant hasn't proven that, as a teacher, she is entitled to receive Employment Insurance (EI) benefits.

Overview

[3] The Appellant is a teacher who works at a private secondary school. She was hired under contract to teach computer and math to grades 10-12. Her first contract was from April 4, 2024, to June 28, 2024, which is when she served her probationary period.[1] Her contract was renewed for the following school year. She returned to work on September 9, 2024, as a permanent full-time teacher.[2]

[4] The Commission considered the factors of the Appellant's teaching contract. The Commission determined the Appellant had accepted a continuing contract of employment, so her teaching employment didn't terminate. The Commission also determined she was not entitled to receive EI benefits during the non-teaching period.

[5] The Appellant disagrees with the Commission and appeals to the Social Security Tribunal. She says her employment wasn't permanent because her contract ended June 28, 2024.

Matters to consider first

Interpreter services

[6] In her appeal documents, the Appellant indicated that she required a Persian interpreter. The Tribunal arranged for an interpreter to attend the hearing and provide interpretation services for the Appellant.

[7] The Appellant requested that the hearing be conducted in English to expedite the hearing. I refused her request. I explained that in order to ensure she has a fair hearing

[1] See page GD3-22.
[2] See page GD3-21.

and clearly understands everything that I say, I would proceed with having the interpreter translate everything that I said into Persian. I also explained that she could speak in English or Persian, whichever she preferred.

[8] During the hearing, the Appellant presented her evidence in English and in Persian through the live interpretation services. Although the Appellant was at times responsive to what I said in English, I continued to have most everything I said in English translated into Persian. As such, I find the Appellant had a fair process and a full opportunity to be heard.

Late documents

[9] In the interest of justice, I have accepted the documents and submissions received after the January 2, 2025, hearing.

[10] At the end of the hearing, the Appellant asked permission to submit a copy of her teaching contract for the 2024-2025 school year. I gave her permission to provide additional documents and submissions, no later than January 2, 2025. The Tribunal received a copy of her 2024-2025 contract on January 2, 2025, along with additional submissions stated in her email to the Tribunal.[3]

[11] To uphold the principles of natural justice and procedural fairness, copies of the additional documents and submissions were sent to the Commission. The Commission didn’t provide a response. So, I find there would be no prejudice to either party if the late documents were accepted.

Issue

[12] Does the Appellant qualify for an exception to be paid EI benefits during the non-teaching periods?

[3] See the GD05 documents.

Analysis

Teachers

[13] The general rule is that teachers can't be paid EI benefits during any non-teaching period of the year.[4] Non-teaching periods are those periods that occur annually when most people employed in teaching don't work.[5] These periods include the summer break, and any other school break.[6]

[14] Although teachers are not working during a non-teaching period, they are not considered to be unemployed during these periods. Not working is different from being unemployed.[7]

[15] There are three exceptions to this general rule.[8] The exceptions are as follows:

(a) the claimant's contract of employment for teaching has terminated;

(b) the claimant's employment in teaching was on a casual or substitute basis; **or**

(c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

[16] The Appellant has to prove that it is more likely than not that one of the exceptions applies to her circumstances.[9] I will now determine whether the Appellant qualifies for an exception to be paid EI benefits during the non-teaching periods.

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[4] Subsection 33(2) of the *Employment Insurance Regulations* (EI Regulations) refers to a "Appellant who was employed in teaching"; subsection 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."
[5] See section 33(1) of the EI Regulations.
[6] See *Canada (Attorney General) v Blanchet*, 2007 FCA 377.
[7] See *Bazinet v Canada (Attorney General)*, 2006 FCA 174.
[8] Section 33(2) of the EI Regulations set out the following three exceptions to the general disentitlement for teachers. A) the teaching contract has terminated; B) the claimant was employed in casual or substitute teaching; C) the claimant qualifies for benefits in an occupation other than teaching.
[9] See *Stone v Canada (Attorney General)*, 2006 FCA 27.

– **Has the Appellant shown she had a clear break in her teaching employment?**

[17] No. The Appellant hasn't proven there was a clear break in the continuity of her teaching employment with the Board of Education.

[18] As stated above, there is an exception where claimants aren't disentitled from being paid benefits if their teaching employment has terminated. But I have to look at more than just the beginning and end dates of contracts to decide whether the Appellant's teaching employment terminated.[10]

[19] Similarly, the fact that the Appellant wasn't being paid during the period in question isn't itself enough for me to find that her contract of employment was terminated.[11] Rather, I have to look at all of the Appellant's circumstances, including things like the continuity of her employment.[12]

[20] The Appellant has to show there was a clear break in the continuity of her employment. There has to be a genuine severance of the relationship between the employer and the Appellant.[13]

[21] The Appellant said the exception applies in her case because her contract ended on June 28, 2024. She wasn't given a formal offer of employment before August 26, 2024, and she didn't sign another contract until August 28, 2024.

[22] The Commission documented its July 18, 2024, conversation with the employer. During that conversation the employer said that the Appellant is on an ongoing contract. During the first three months from April to June 2024, was served as a probationary period going into her full-term contract. The Appellant didn't have to apply for her teaching role for the upcoming school year (2024-2025), and her continued employment is not based on performance.[14]

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[10] See *Bazinet v Canada (Attorney General)*, 2006 FCA 174.
[11] See *Stone v Canada (Attorney General),* 2006 FCA 27.
[12] See *Stone v Canada (Attorney General),* 2006 FCA 27.
[13] See *Bazinet v Canada (Attorney General)*, 2006 FCA 174.
[14] See page GD3-22.

[23] The Commission also documented its October 28, 2024, conversation with the employer.[15] During that conversation the employer said that the Appellant was hired as a permanent teacher from March 2024, and she will continue to be a permanent teacher until she is dismissed or quits her job.

[24] The Appellant testified that in June 2024, she was generally told that the employer was happy with her work. There was talk about her returning in September, but it was just "general talks." Upon further clarification, the Appellant confirmed that in June 2024, she was informally told she would be brought back to teach in September 2024.[16]

[25] The Commission submits that the Appellant hasn't met the onus of proving that her teaching contract was terminated on June 28, 2024, and that she will not be returning to work with her employer following the non-teaching period. On July 18, 2024, the Appellant said that her contract would be automatically renewed for the upcoming school year, and she was asked to come back as of September 9, 2024.[17] This supports that she knew she would be returning the following school year before she signed the contract.

[26] The Commission submits that the employment relationship continued when she entered into an agreement with her employer for the following teaching period. Consequently, the Appellant doesn't meet the exception under paragraph 33(2)(a) of the Regulations. I note that an agreement can be verbal or written.

[27] Upon review of the Appellant's first contract, I note that it states as follows.

> 5.7 This contract automatically terminates on the last day of each semester and a new contract will be entered between the two parties at least two (2) weeks before the beginning of a new semester.[18]

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[15] See page GD3-27.
[16] Starting at 44:45 of the January 2, 2025, audio recording.
[17] See page GD3-21.
[18] See page GD2-12.

[28] I acknowledge that the Appellant was working under contract, which listed an end date of June 28, 2024. That said, I find the Appellant hasn't shown there was a veritable break in her teaching employment. This is because, as early as the end of June, she was aware that she passed her probationary period and would be offered another teaching position for the 2024-2025 school year.

[29] In the Federal Court of Appeal (FCA) case *Stone,* the circumstances were very similar to the Appellant's.[19] Specifically, at the conclusion of the school year, the employer would inform the applicant that it was pleased with her teaching and if enrollment and funding for the age group they taught were sufficient, she would be contacted during the summer and asked to work at the school again come the fall. The employer did this so that the applicant could remain available to return to the school. In that case the Court determined that *Stone* didn't have a clear break from her teaching employment.

[30] In *Blanchet,* the FCA determined the appeals of four part-time teachers.[20] In that decision the FCA held that teachers working part-time under contract in consecutive school years weren't exempt from being disentitled during non-teaching periods. This is because they didn't suffer a veritable break in the continuity of their teaching employment.

[31] After careful consideration of the evidence before me, I can't conclude there was a genuine severance or break in the Appellant's relationship with her employer.[21] Even though she didn't formally sign the contract for the 2024-2025 school year until August 28, 2024, there is evidence that, at the end of June 2024, she was aware of and casually accepted the offer to work the following school year. She continued her employment for the 2024-2025 school year.

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[19] See *Stone v Canada (Attorney General)*, 2006 FCA 27.
[20] See *Blanchet v Canada (Attorney General),* 2007 FCA 377.
[21] See *Oliver v. Canada (Attorney General)*, [2003] 4 FCR 47.

[32] Accordingly, I find that the Appellant didn't suffer a genuine severance of the employer/employee relationship.[22] This means the Appellant doesn't meet this exception to be paid EI benefits during school breaks, as provided under section 33(2)(a) of the EI Regulations.

– **Does the Appellant qualify for benefits based on her casual or substitute teaching?**

[33] No. I find that the Appellant doesn't qualify for benefits based on substitute teaching. This is because the Appellant's employment in teaching, during the qualifying period, wasn't predominantly or entirely on a casual or substitute basis.

[34] The Commission submits that the Appellant's employment from April 4, 2024, to June 28, 2024, was sufficiently regular, continuous, and predetermined so it doesn't meet the definition of casual or substitute teaching within the meaning of paragraph 33(2)(b) of the Regulations. I agree.

[35] The Appellant testified that she was hired under contract but there was no promise she would be a full-time employee. Upon review of her contract, I see that she was to teach credit courses Monday to Friday from 8:40 a.m.-10:40 a.m. and from 10:40 a.m. to 12:40 p.m. and tutor hours up to 10 hours total for one credit course. The Appellant testified she was also assigned to teach math courses that the main math teacher couldn't cover.

[36] The Federal Court of Appeal (FCA) in *Stephens* referred a matter back to the Umpire to determine whether, based on the facts, the claimant's employment was on a casual or substitute basis.[23] The FCA noted in that decision that "it is theoretically possible that a teacher may have a period of employment as a supply teacher that is sufficiently regular that it cannot be said to be 'employment on a casual or substitute basis."

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[22] See *Canada (Attorney General) v. Robin,* 2006 FCA 175*,* and *Dupuis v. Canada (Attorney General)* 2015 FCA 228.
[23] See *Stephens v. Canada (Minister of Human Resources and Development)*, 2003 FCA 477.

[37] I am also persuaded by a decision of this Tribunal's Appeal Division in *Cullen.*[24] In the *Cullen* decision, the Appeal Division determined that section 33(2)(b) requires consideration of the Appellant's employment in teaching as a whole during the qualifying period.

[38] As stated above, the employer said the Appellant was working on an ongoing contract. The first three months served as her probationary period into her full-term contract.

[39] The Appellant's Record of Employment (ROE) stipulates that she worked as a teacher until her last day paid on June 28, 2024. Although the ROE states the reason for issuing the ROE is for shortage of work / end of contract or season, this isn't proof that the Appellant's employment was casual or on a substitute basis. Rather, the evidence supports that her employment was sufficiently continuous and predetermined.

[40] After consideration of the foregoing, I find that the Appellant's employment in teaching during the qualifying period can't be considered as being on a casual or substitute basis. This is because her employment was predominantly as a teacher under contract.

– **Does the Appellant qualify for benefits for a job in an occupation other than teaching?**

[41] No. The Appellant doesn't qualify for benefits in an occupation other than teaching.

[42] There is no evidence that the Appellant worked in an occupation other than teaching. This means she doesn't meet this exception.[25]

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[24] See *Cullen v Canada Employment Insurance Commission,* AD-17-278.
[25] See paragraph 33(2)(c) of the EI Regulations.

Has the Appellant shown she meets an exception to be paid EI benefits?

[43] No. I find the Appellant hasn't shown she meets an exception to be paid EI benefits during the non-teaching periods. This means she is disentitled from receiving EI benefits as of July 1, 2024.

Conclusion

[44] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section