



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. Q. v. Canada Employment Insurance Commission*, 2018 SST 1069

Tribunal File Number: GE-18-362

BETWEEN:

T. Q.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: August 14, 2018

DATE OF DECISION: September 4, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant applied for employment insurance fishing benefits and the Canada Employment Insurance Commission (Commission) determined that he qualified for benefits. The Commission established a benefit period – the window of time in which he could receive benefits – and calculated his rate of weekly benefits. The Commission determined that the Appellant’s earnings from a fishing trip with X did not fall within his qualifying period and so did not include these earnings when calculating his rate of weekly benefits. The Appellant requested a reconsideration, arguing that the Commission should have included the earnings from his fishing trip with X when determining his rate of weekly benefits. The Commission maintained its decision and the Appellant appealed to the Social Security Tribunal (Tribunal).

[3] I find that the dates of the fishing trip with fall completely outside of the Appellant’s qualifying period. I find that the earnings from this fishing trip must be allocated, or applied, to the dates of the fishing trip and so I find that none of the earnings from this fishing trip fall within the Appellant’s qualifying period. As a result, I find that the earnings from X cannot be used in the calculation of the Appellant’s rate of weekly benefits.

ISSUES

- Issue 1 – What is the duration of the Appellant’s qualifying period?
- Issue 2 – What were the dates of the fishing trip with X? Do any earnings from this fishing trip fall within the Appellant’s qualifying period?
- Issue 3 – Should any of the earnings from X be used to determine the Appellant’s rate of weekly benefits?

ANALYSIS

[4] The relevant legislative provisions are reproduced in the Annex to this decision.

[5] Claimants who are self-employed as fishers may make claims for employment insurance benefits. The *Employment Insurance (Fishing) Regulations* (Fishing Regulations) set out the conditions for fishers to receive employment insurance benefits.

[6] When a fisher makes an initial claim for benefits and has enough earnings to qualify to receive benefits, the Commission establishes a benefit period (subsections 8(1) and 8(6) of the Fishing Regulations). When determining whether a claimant has enough earnings to qualify for benefits, and when calculating the rate of weekly benefits, the Commission refers to the qualifying period. The duration of the qualifying period depends on the season and the start of any prior benefit period, but a qualifying period is never more than 31 weeks long (subsections 8(4) and 8(9) of the Fishing Regulations). A qualifying period cannot be extended under any circumstances (subsections 8(5) and 8(10) of the Fishing Regulations).

Issue 1: What is the duration of the Appellant's qualifying period?

[7] I find that the Appellant's qualifying period is 31 weeks and runs from April 2 to November 4, 2017.

[8] The Appellant made his initial claim for benefits on November 8, 2017. He stated to the Commission that he did not want his benefit period to start earlier and so the Commission established a benefit period starting on November 5, 2017. The Appellant's most recent prior benefit period started on October 2, 2016, and so the Commission determined that the Appellant's qualifying period could start 31 weeks prior to the start of his benefit period.

[9] Given that a qualifying period cannot be extended under any circumstances, I am satisfied that the Appellant's qualifying period should be 31 weeks long. The Appellant did not dispute the Commission's decision to start his benefit period on November 5, 2017, and so I am satisfied that his qualifying period runs from April 2 to November 4, 2017, the 31 week period immediately before the start of his benefit period.

Issue 2: What were the dates of the fishing trip with X? Do any earnings from this fishing trip fall within the Appellant's qualifying period?

[10] I find that the fishing trip with X was March 6 to March 8, 2017, the dates that the Appellant was actually on the vessel for the fishing voyage. I find that the earnings from this trip must be allocated to the dates of the trip itself. Since his qualifying period runs from April 2 to November 4, 2017, I find that no portion of the earnings from this fishing trip fall within his qualifying period.

[11] Earnings from a catch of fresh fish are to be allocated, or applied, equally to each day of the fishing trip (paragraph 10(3)(a) of the Fishing Regulations).

[12] According to the Record of Employment (ROE) from X, the trip started on March 6 and ended on March 8, 2017. The employer stated that they paid money to the Appellant in September 2017, but that the September 2017 payment was a price adjustment related to the March 2017 catch and was not payment for an additional fishing voyage.

[13] At the hearing, the Appellant testified that he fished for fresh herring on the trip for X. He stated that he was on the vessel from March 6 to March 8, 2017. He submitted a settlement report, a fish slip, and other pay documents stating that he received a payment from X in March 2017, and then received a second payment on September 5, 2017. I accept these documents, and I find that the Appellant was paid in two instalments – one in March 2017 and a second in September 2017.

[14] At the hearing, the Appellant argued that the dates of fishing trip should reflect the voyage on the vessel, the delivery of the fish, and then the receipt of the full and final payment. He argued that the end date of his fishing trip with X should be in September 2017 because that is when the employer made the full and final payment.

[15] The Fishing Regulations do not define a fishing trip. However, I find that the meaning of a fishing trip should be interpreted as simply as possible. I find that a fishing trip should refer to the duration of the fishing voyage itself (CUB 54934); in other words, the time the Appellant spent at sea on the vessel, is the fishing trip. I find that a fishing trip does not include the time the Appellant spent waiting for the remainder of his payment. Given that the Appellant

acknowledged that he was on the vessel from March 6 to March 8, 2017, I find that these are the dates of the fishing trip.

[16] I accept that the Appellant did not receive his final payment for this trip until September 5, 2017; however, earnings for a catch of fresh fish must be allocated to the dates of the trip itself. Given that the duration of the fishing trip is March 6 to March 8, 2017, I find that the earnings should be allocated equally to these dates. The Appellant's qualifying period is April 2 to November 4, 2017, and so I find that none of the earnings from this fishing trip fall within his qualifying period.

Issue 3: Should any of the earnings from X be used to determine the Appellant's rate of weekly benefits?

[17] I find that only earnings within the qualifying period may be used to determine the rate of weekly benefits. I find that all of the earnings from X fall outside of the Appellant's qualifying period, and so I find that none of these earnings may be used to determine the rate of weekly benefits.

[18] To determine the rate of weekly benefits, the Commission makes a calculation based on the regional rate of unemployment and the total fishing earnings within the qualifying period (subsection 8.1 of the Fishing Regulations). There is no provision in the Fishing Regulations for including earnings outside of the qualifying period in the calculation of the rate of weekly benefits. As a result, I find that none of the earnings from X may be used in the calculation of the Appellant's rate of weekly benefits.

CONCLUSION

[19] The appeal is dismissed.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	August 14, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. Q., Appellant

ANNEX

THE LAW

Employment Insurance (Fishing) Regulations

8 (1) Subject to any other provision of this section and regardless of whether the fisher has had an interruption of earnings, a benefit period shall be established for a fisher who makes an initial claim for benefits during a period beginning not earlier than the Sunday of the week in which October 1 falls and ending not later than the Saturday of the week in which the following June 15 falls.

(2) In order to have a benefit period referred to in subsection (1) established in respect of a fisher, the fisher shall prove that they

(a) are not qualified under section 7 of the Act to receive benefits; and

(b) have accumulated, since the beginning of the qualifying period, not less than the amount of insurable earnings from employment as a fisher that is set out in the schedule for the unemployment rate applicable to the region where they reside.

(3) and (3.1) [Repealed, SOR/2016-206, s. 13]

(4) The qualifying period referred to in paragraph (2)(b)

(a) begins on the latest of

(i) the Sunday of the week in which the March 1 preceding the week in which the fisher makes the initial claim for benefits falls,

(ii) the Sunday of the week in which the fisher's last benefit period began, and

(iii) the Sunday of the 31st week preceding the week in which the fisher makes the initial claim for benefits; and

(b) ends on the Saturday of the week preceding the week in which the fisher makes the initial claim for benefits.

(5) Notwithstanding subsections 8(2) to (4) of the Act, the qualifying period described in subsection (4) shall not be extended.

(6) Subject to any other provision of this section and regardless of whether the fisher has had an interruption of earnings, a benefit period shall be established for a fisher who makes an initial claim for benefits during a period beginning not earlier than the Sunday of the week in which April 1 falls and ending on the Saturday of the week in which the following December 15 falls.

(7) In order to have a benefit period referred to in subsection (6) established in respect of a fisher, the fisher shall prove that they

(a) are not qualified under section 7 of the Act to receive benefits; and

(b) have accumulated, since the beginning of the qualifying period, not less than the amount of insurable earnings from employment as a fisher that is set out in the schedule for the unemployment rate applicable to the region where they reside.

(8) and (8.1) [Repealed, SOR/2016-206, s. 13]

(9) The qualifying period referred to in paragraph (7)(b)

(a) begins on the latest of

(i) the Sunday of the week in which the September 1 preceding the week in which the fisher makes the initial claim for benefits falls,

(ii) the Sunday of the week in which the fisher's last benefit period began, and

(iii) the Sunday of the 31st week preceding the week in which the fisher makes the initial claim for benefits; and

(b) ends on the Saturday of the week preceding the week in which the fisher makes the initial claim for benefits.

(10) Notwithstanding subsections 8(2) to (4) of the Act, the qualifying period described in subsection (9) shall not be extended.

(11) A benefit period established under subsection (1) or (6) begins with and includes the week in which the initial claim for benefits is made and ends with the earlier of

(a) the Saturday of the last week of unemployment for which benefits are payable pursuant to subsection (12); and

(b) the ending date of the benefit period referred to in subsection 8(1) or (6), as the case may be.

(11.1) Despite subsection (11) and subject to the applicable maximums referred to in subsections (17) and (18), a fisher's benefit period shall be extended by one week for each week in respect of which the fisher is entitled to special benefits under section 21, 22, 23, 23.1, 23.2 or 23.3 of the Act, but shall not exceed a maximum of 52 weeks.

(11.2) Notwithstanding subsection (11) and subject to the applicable maximums referred to in subsections (17) and (18), if, during the period referred to in subsection 23(2) of the Act, the child or children referred to in subsection 23(1) of the Act are hospitalized, the fisher's benefit period is extended by the number of weeks during which the child or children are hospitalized.

(11.21) Despite subsection (11) and subject to the applicable maximums referred to in subsections (17) and (18), if, during the period referred to in subsection 23(2) of the Act, the start date of a fisher's period of parental leave is deferred or a fisher is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the fisher's benefit period is extended by the number of weeks during which the fisher's parental leave is deferred or the fisher is directed to return to duty, as the case may be.

(11.3) Despite subsection (11) and subject to the applicable maximums referred to in subsection (17), if, during a fisher's benefit period, benefits were not paid to the fisher under subsection (12), benefits were paid to the fisher for more than one of the reasons mentioned in paragraphs

12(3)(a) to (f) of the Act and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and the maximum total number of weeks established for those reasons is greater than 50, the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

(11.31) If, during a fisher's benefit period, neither benefits under subsection (12) nor benefits for any reason mentioned in paragraph 12(3)(a), (c), (d), (e) or (f) of the Act were paid to the fisher but benefits were paid to the fisher for the reason mentioned in paragraph 12(3)(b) of the Act in the case where the applicable maximum number of weeks is established in subparagraph 12(3)(b)(ii) of the Act, the benefit period is extended by 26 weeks so that benefits may be paid up to that maximum number of weeks.

(11.32) If, during a fisher's benefit period, benefits were paid under subsection (12) and also for the reason mentioned in paragraph 12(3)(b) of the Act in the case where the applicable maximum number of weeks is established under subparagraph 12(3)(b)(ii) of the Act, and benefits were paid for fewer than the total number of weeks established under subsection (18) as determined by subsection (18.1), the benefit period is extended so that benefits may be paid up to that total number of weeks. The extension must not exceed 26 weeks.

(11.33) Only the benefits under subsection (12) and benefits for any reason mentioned in paragraphs 12(3)(a) to (f) of the Act that were paid during the fisher's benefit period before it was extended under subsection (11.32) are payable during that extension.

(11.4) Any extension under subsections (11.1) to (11.32) shall not result in a benefit period of more than 104 weeks.

(11.5) Subject to subsection (11.4), unless the benefit period is also extended under any of subsections (11.1) to (11.21), an extension under subsection (11.3) shall not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) of the Act for each of the benefits paid to the fisher for one of the reasons mentioned in paragraphs 12(3)(a) to (f) of the Act during the fisher's benefit period before it was extended under subsection (11.3).

(12) Subject to subsection (18), where a benefit period has been established for a fisher, benefits may be paid to the fisher for each week of unemployment that falls in a benefit period referred to in subsection (11), but the total amount paid shall not represent more than 26 weeks of benefits.

(13) [Repealed, SOR/2013-32, s. 3]

(14) A benefit period established under subsection (1) or (6) shall not be extended beyond the date determined in accordance with any of subsections (11) to (11.32).

(15) Section 6, subsections 7(1) and (2), sections 8, 9 and 11 and subsections 12(2) and 14(1.1) of the Act do not apply to persons who are claimants under these Regulations.

(16) A benefit period established under subsection (1) or (6) is a benefit period for the purposes of paragraph 8(1)(b), subsection 10(3), paragraph 10(6)(b), subsection 152.11(3) and paragraph 152.11(7)(b) of the Act.

(17) Where a benefit period is established under subsection (1) or (6) for a fisher, benefits may be paid to the fisher in the benefit period in accordance with the Act for any of the reasons

referred to in subsection 12(3) of the Act and subject to the applicable maximums established by subsections 12(3) to (6) of the Act.

(17.1) For the purpose of subsection (17), the reference in subsection 12(5) of the Act to

(a) subsection 10(13) of the Act is to be read as a reference to subsection (11.3) of this section; and

(b) subsection 10(15) of the Act is to be read as a reference to subsection (11.5) of this section.

(c) and (d) [Repealed, SOR/2013-103, s. 1]

(18) In a benefit period established for a fisher under subsection (1) or (6), benefits may be paid to the fisher under both subsections (12) and (17), but in no case shall the maximum number of combined weeks of benefits exceed 50.

(18.1) For the purpose of determining whether the total number of weeks of benefits established under subsection (18) has been reached, in the case where benefits have been paid to a fisher for the reason mentioned in paragraph 12(3)(b) of the Act and the applicable maximum number of weeks is established under subparagraph 12(3)(b)(ii) of the Act,

(a) the number of weeks of benefits that were paid for the reason mentioned in paragraph 12(3)(b) of the Act is converted to the number of weeks of benefits that would have been paid at a rate of weekly benefits of 55%, as set out in the table in Schedule IV of the Act; and

(b) other than the weeks referred to in subsections (11.2) and (11.21) in respect of which the benefit period is extended and the week referred to in section 13 of the Act, the weeks for which no benefits were paid are deemed to be weeks for which benefits were paid at a rate of weekly benefits of 55%.

(19) A disqualification under section 30 of the Act shall not apply in respect of the establishment of a benefit period for a fisher.

8.1 For the purposes of calculating a fisher's rate of weekly benefits,

(a) the fisher's weekly insurable earnings shall be determined by

(i) dividing their earnings from employment as a fisher in the qualifying period by the divisor set out in the table to subsection 8.2(1) opposite the applicable regional rate of unemployment, and

(ii) adding to the quotient determined in accordance with subparagraph (i) their weekly insurable earnings from employment in the rate calculation period, other than employment as a fisher, not including earnings from any employment that was lost for reasons of misconduct or that was left voluntarily without just cause; and

(b) the fisher's maximum weekly insurable earnings are the maximum yearly insurable earnings as calculated in accordance with section 4 of the Act divided by 52.

10 (1) For the purposes of section 19 of the Act, the determination and allocation of earnings of a person who is claiming benefits under these Regulations shall be made in accordance with subsections (2) to (4).

(2) Where a claimant under these Regulations has any earnings from an employment in fishing under a contract of service, whether it is an insurable employment or not, or has any earnings other than from an employment in fishing, the claimant's total earnings shall be determined in accordance with section 35 of the *Employment Insurance Regulations* and allocated in accordance with section 36 of those Regulations.

(3) The earnings determined in accordance with subsection 5(2) or (3) shall

(a) in the case of earnings from a catch consisting of fish other than cured fish, be allocated equally to each day of the fishing trip; and

(b) in the case of earnings from a catch consisting of cured fish, be allocated to the week of delivery of the catch.

(4) For the purposes of subsection 19(3) of the Act, the period referred to in that subsection is the period in respect of which earnings are allocated under paragraph (3)(a) or (b) of this section.