



Citation: *FT v Canada Employment Insurance Commission*, 2021 SST 832

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: F. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (431421) dated September 9, 2021 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: October 20, 2021

Hearing participants: Appellant

Decision date: November 8, 2021

File number: GE-21-1698

Decision

[1] The appeal is dismissed. The Claimant, F. T., received employment insurance fishing benefits to which he wasn't entitled. He has to repay those benefits.

Overview

[2] The Claimant is a fisher. He applied for and received fishing benefits under the *Employment Insurance Act* (EI Act) and the *Employment Insurance Fishing Regulations* (Fishing Regs). This was a summer claim that started on September 27, 2020. There is no problem with this claim. This appeal is about what happened after the Claimant received the full 26 weeks of fishing benefits under that claim.

[3] The Claimant says that his union and Service Canada told him that he was entitled to more benefits. The Claimant believed this was an extension of benefits similar to when ice delays the start of the fishing season.

[4] With his brother's help, the Claimant applied for more fishing benefits. He says Service Canada assured them that he was entitled to the benefits because of the COVID-19 pandemic.

[5] The Canada Employment Insurance Commission (Commission) established a benefit period for the Claimant effective March 28, 2021, and paid the Claimant benefits from then until May 15, 2021.

[6] The Commission has now decided that the Claimant wasn't entitled to those benefits and says he has to repay them.

[7] The Claimant says that if he wasn't entitled to the benefits the Commission shouldn't have paid them to him. He shouldn't have to repay them now.

Issue

[8] The questions I have to answer are:

- Was the Claimant entitled to the benefits he received between March 28, 2021, and May 15, 2021?
- If not, does he have to repay the benefits he received?

Analysis

[9] To receive benefits under the *Employment Insurance Act* a claimant has to prove that they qualify to receive them.¹ When a claimant receives benefits that they shouldn't have received, the law says they have to repay those benefits.

Was the Claimant entitled to the benefits he received between March 28, 2021, and May 15, 2021?

[10] No. The Claimant wasn't entitled to receive those benefits. This is why:

– **The Claimant didn't qualify for regular employment insurance benefits.²**

[11] The Claimant didn't qualify for regular employment insurance benefits. This is because he only works in fishing. He had no employment that would have given him the insurable hours needed for regular employment insurance benefits.³

[12] There is no evidence in the file to suggest that the Claimant had any other employment, so I find that the Claimant didn't qualify for regular employment insurance benefits.

[13] This is important because a claimant who qualifies for regular employment insurance benefits can't receive fishing benefits.

¹ Section 7(1) of the EI Act says that benefits are payable to those who qualify to receive them. Section 48(1) of the EI Act says that a benefit period can be established only if the claimant proves that they are qualified to receive the benefits.

² By regular benefits, I mean regular non-fishing benefits.

³ Section 7(2) of the EI Act says that claimants need a certain number of hours from insurable employment to qualify for regular (non-fishing) employment insurance benefits.

– **The Claimant didn't qualify for fishing benefits.**

[14] To qualify for fishing benefits, claimants can't be entitled to regular employment insurance benefits.⁴ As stated above, I find the Claimant isn't entitled to regular employment insurance benefits.

[15] Another requirement for fishing benefits is that a claimant needs a certain amount of earnings from fishing in their qualifying period. This is where it gets a bit complicated. There are two possible qualifying periods with two possible benefit periods for fishing benefits. The Commission usually refers to these two claims as a summer claim and a winter claim.⁵

[16] Parliament made some temporary changes to the law to help fishers receive fishing benefits even if they didn't have enough fishing earnings to qualify. These temporary rules can be used to qualify once for summer benefits and once for winter benefits.

[17] When the Claimant applied for benefits in April 2021, he applied for winter benefits.

– **The Claimant didn't qualify for a winter claim.**

[18] The Claimant couldn't establish a benefit period for a winter claim. This is why:

- He didn't have any earnings from fishing that would allow him to qualify for a winter claim.⁶ The Claimant doesn't dispute this.

⁴ See section 8(2) of the Fishing Regs.

⁵ Section 8(1) of the Fishing Regs is about applications (initial claims) made between October and June. These are called summer claims because the qualifying period starts the week of March 1 – so speaking generally, the fishing is done during the “summer.” Section 8(6) of the Fishing Regs is about applications made between April and December. These are called winter claims because the qualifying period starts the week of September 1 – so, again, speaking in general terms, the fishing is done during the “winter.” For more information about the exact dates, see the relevant section. See also sections 8(4) and 8(9) for details about the qualifying periods.

⁶ The least amount of fishing earnings required is \$2,500. This is set out in section 8 and schedule 1 of the Fishing Regs. The amount of earnings is based on the unemployment rate in the economic region where the Claimant lives. The Claimant lives in the region of Newfoundland and Labrador. The unemployment rate in that region has consistently been over 13% since September 2020. When the unemployment rate is 13% or higher, claimants need a minimum of \$2,500 of insurable fishing earnings

- The Claimant didn't meet the requirements of the temporary rules that would let him establish a winter claim.

[19] The temporary rules say that a claimant who doesn't meet the conditions to receive fishing benefits can receive benefits if a benefit period was established for a winter claim in 2020 or 2019.⁷

[20] The Claimant confirmed that he has never made a winter claim. The Claimant usually fishes from May until September, with the start and end dates depending heavily on the weather and ice. He makes only one claim a year around October.

[21] Because the Claimant hadn't established a benefit period for a winter claim in 2020 or 2019, and didn't have any fishing earnings, he couldn't qualify for a winter claim in March 2021.

The Claimant didn't qualify for another summer claim.

[22] The Claimant couldn't establish another benefit period for a summer claim. This is why:

- The temporary rules only apply to fishers who don't meet the requirements to establish a benefit period under the usual rules.⁸
- The Claimant met the conditions to establish a benefit period in September 2020, so the temporary rules to establish a benefit period don't apply to him.⁹

[23] While I agree with the Commission that the Claimant didn't qualify for another summer claim, my reasons why are different. I explain why in the next paragraphs.

to establish a benefit period. Further, the Commission said the Claimant needed \$2,500 in fishing earnings (GD2-9) and the Claimant didn't dispute this.

⁷ I am paraphrasing. For the exact wording, see sections 153.1922 and 153.1923 of the EI Act.

⁸ Section 153.1922 of the Fishing Regs reads: "A fisher who does not meet the conditions under paragraph 8(2)(b) or (7)(b) of the Employment Insurance (Fishing) Regulations may receive benefits under section 8.1 of those Regulations if the fisher has received such benefits during any of the periods referred to in subparagraph 153.1923(1)(a)(ii) or (iii) or (b)(ii) or (iii)."

⁹ The Claimant had enough fishing earnings (more than \$2,500) to establish a benefit period in September 2020. See his records of employment on pages GD3-18 and GD3-20.

[24] The Commission says claimants can establish only one summer claim under the temporary rules. This is true. But, since the Claimant hadn't had a summer claim established under the temporary rules, that restriction doesn't apply to him.

[25] The Commission says the Claimant had to rely on the temporary rules whether he needed to or not. This is not correct. As I mentioned above, the temporary rules apply only when a claimant doesn't qualify. Since the Claimant could (and did) qualify for benefits under the regular rules, the temporary rules relating to summer claims don't apply to him.¹⁰ This is why he couldn't rely on them.

[26] Since the Claimant didn't meet the requirements under the law to receive fishing benefits (for either a summer or winter claim), he wasn't entitled to the benefits that he received.

Does he have to repay the benefits he received?

[27] I know the Claimant will be disappointed, but yes, he has to repay those benefits.

[28] The law is clear - no matter the reason benefits are received, if a claimant isn't entitled to them, they have to be repaid.¹¹ I have no authority to change this, even if it seems unfair to require repayment.

[29] The Claimant is upset that he has to repay more than he received in pocket. He has to repay the before-tax amount, but, of course, only received the after-tax amount in his pocket. Unfortunately, there is nothing I can do about this. The Claimant will have to talk to Canada Revenue Agency about this matter.

[30] The Commission has the authority to write off overpayments in some very limited circumstances.¹² I don't have the authority to write off overpayments, nor can I review the Commission's write-off decisions.¹³

¹⁰ By regular rules I mean under section 8(2)(b) of the Fishing Regs.

¹¹ Section 44 of the EI Act says that a person who has received benefits to which they aren't entitled have to return the amount without delay.

¹² See section 56 of the *Employment Insurance Regulations*.

¹³ See sections 112, 112.1 and 113 of the EI Act.

Conclusion

[31] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section