

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

Decision

Appellant:

R. S.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (430694) dated August 31, 2021
(issued by Service Canada)

Tribunal member:

Catherine Shaw

Type of hearing:

Videoconference

Hearing date:

December 1, 2021

Hearing participant:

Appellant

Decision date:

December 8, 2021

File number:

GE-21-2046

Decision

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

[2] The Claimant hasn't shown that he qualified to receive fishing benefits from April 25, 2021.

Overview

[3] The Claimant worked as a fisher from August to October 2020. He applied for fishing benefits in October 2020, and was paid the maximum of 26 weeks from October 11, 2020, to April 24, 2021. He then re-applied for fishing benefits in May 2021. The Canada Employment Insurance Commission (Commission) told him that he qualified for an extension of benefits, even though he didn't have any fishing earnings since the previous summer. He was paid another 8 weeks of benefits.

[4] The Commission then decided that the Claimant wasn't entitled to those benefits because he didn't have the fishing earnings he needed to start a new claim. It asked him to repay the 8 weeks of benefits, a total of \$4,760.

[5] The government made some temporary rules to help claimants access benefits. These rules allowed a fishing claim to be calculated using the highest earnings from a fisher's current claim or previous years' claims for the same season.¹

[6] The Commission says the Claimant didn't qualify for fishing benefits in April 2021. He didn't meet the conditions to start a winter claim. And he couldn't use the new the temporary rules to start another summer claim. This is because his previous claim had been calculated using the temporary rules, and the rules can only be used once for a summer claim and once for a winter claim.

[7] The Claimant says the Commission told him that he was entitled to these benefits before he applied. He disagrees with the Commission's choice to use the

¹ These temporary rules are set out in part VIII.5 of the *Employment Insurance Act* (EI Act). See sections 153.1922, 153.1923(1) and 153.1924.

temporary rules on his fishing claim from October 2020, as he had enough earnings to qualify already.

Issue

[8] I have to decide if the Claimant was entitled to receive fishing benefits from April 25, 2021.

Analysis

[9] To receive EI benefits, a claimant has to prove that they qualify to receive them.² To qualify for fishing benefits, you have to meet several conditions:

- You don't qualify for regular benefits.³
- You have earned enough insurable earnings within a certain time frame. This time frame is called the "qualifying period."⁴

The Claimant didn't qualify for regular benefits

[10] Both parties agree that the Claimant didn't qualify for regular benefits. I see no evidence to contradict this. So, I accept that the Claimant didn't qualify for regular benefits.

[11] Now, I will look at whether he had enough insurable earnings within his qualifying period.

² 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.

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

⁴ See section 8(7) of the EI (Fishing) Regulations. The amount of insurable earnings you must have earned is set out in the schedule for unemployment rate applicable to the region where you reside.

There are two different periods for fishing benefits

[12] A claimant can collect fishing benefits from earnings they received over the winter or over the summer.⁵

[13] A summer claim is a claim made during a period not earlier than the Sunday of the week in which October 1st falls and ends no later than the Saturday of the week in which June 15th falls.⁶ A winter claim is made during a period not earlier than the Sunday of the week in which April 1st falls and ends on the Saturday of the week in which December 15th falls.⁷ There are different qualifying periods for each of the two types of benefit periods.

[14] Since this issue concerns the Claimant's claim for a fisher benefits from April 25, 2021, I will only explain the qualifying period for a winter claim.⁸

[15] For a winter fisher claim, the qualifying period begins on the latest of:

- The Sunday of the week in which the September 1st before the week in which the fisher makes the initial claim for benefits falls;
- The Sunday of the week in which the fisher's last benefit period began; and,
- The Sunday of the 31st week before the week in which the fisher makes the initial claim for benefits.

[16] The qualifying period ends on the Saturday of the week before the week in which the fisher makes the initial claim for benefits.

[17] The Claimant had a prior fisher claim before his claim made on May 11, 2021. He worked from August 11, 2020, to October 10, 2020. He had fishing earnings of \$15,304.25. He applied for fisher benefits on October 14, 2020, and was paid 26 weeks

⁵ This is a plain language explanation. These are also the terms that the Commission uses to refer to these two benefit periods. These benefit periods are described in sections 8(1) and 8(6) of the EI (Fishing) Regulations.

⁶ See section 8(1) of the EI (Fishing) Regulations.

⁷ See section 8(6) of the EI (Fishing) Regulations

⁸ See section 8(9) of the EI (Fishing) Regulations.

of benefits from October 11, 2020, to April 24, 2021. Since his claim for benefits was made on October 14, 2020, and the benefit period began on October 11, 2020, this was a summer claim.

[18] The Claimant then applied for fisher benefits on May 11, 2021, asking that his benefit period began on April 25, 2021. Since he had made his initial claim on May 11, 2021, and is asking that his benefit period begin April 25, 2021, this is a winter claim.⁹

[19] The Commission says the Claimant's benefit period for his new claim started on April 25, 2021. The Claimant didn't dispute this start date of his benefit period, so I accept this as the start date.

[20] To determine the qualifying period, I looked at the three dates set out by the law:

- The Sunday of the week in which the September 1st before the week in which the Claimant made the initial claim for benefits is August 30, 2020.
- The Sunday of the week in which the Claimant's last benefit period began is October 11, 2020.
- The Sunday of the 31st week before the week in which the Claimant made the initial claim for benefits was September 20, 2020.

[21] The law says the later of those dates is the start of the qualifying period. So, the qualifying period begins on October 11, 2020.

[22] The qualifying period ends on the Saturday of the week before the week in which the Claimant made the initial claim for benefits. Although he made his claim on May 11, 2021, the Commission appears to have considered it to be made as of April 25, 2021. The Saturday before that is April 24, 2021.

[23] So, the Claimant's qualifying period is from October 11, 2020, to April 24, 2021.

[24] The Commission says the Claimant needed \$2,500 in fishing earnings to qualify for benefits from April 25, 2021. The Claimant doesn't dispute this is the amount of

⁹ See section 8(6) of the EI (Fishing) Regulations and section 153.1923(1)(b) of the EI Act.

earnings he needs. So, I accept that he needs \$2,500 in his qualifying period to start a claim for benefits on April 25, 2021.

[25] This means the Claimant has to have earned \$2,500 from fishing from October 11, 2020, to April 24, 2021, to start a claim for fisher benefits on April 25, 2021. Or he has to be able to qualify based on the temporary rules the government made to help fishers access benefits.

[26] The Commission says the Claimant had not earned the required \$2,500 in his qualifying period. The Claimant agrees. He acknowledges that he had no earnings from fishing in this period. He last fished on October 10, 2020.

[27] The Claimant didn't have fishing earnings in his qualifying period, so he cannot start a claim for fisher benefits based on his earnings. I will now look at whether he can benefit from the temporary rules.

Temporary rules to help fishers access benefits

[28] If you don't meet the conditions of having enough fishing earnings in your qualifying period, the temporary rules allow a fishing claim to be calculated based on your highest earnings from your current claim, or the two preceding years for the same season.¹⁰

[29] The earnings must be from the same seasons. For a claim for benefits made on or after March 28, 2021, the earnings are the highest of either:

- The earnings that would be used to calculate your rate of weekly benefits;
- The earnings that were used to calculate your rate of weekly benefits for the benefit period started during the period starting on March 29, 2020, and ending on December 19, 2020; and,

¹⁰ See sections 153.1922 and 153.1923 of the EI Act.

- The earnings that were used to calculate your rate of weekly benefits for the benefit period started during the period starting March 31, 2019, and ending on December 21, 2019.¹¹

[30] You can only benefit from these rules once for a summer fishing claim and once for a winter fishing claim between September 27, 2020, and September 25, 2021.¹²

[31] For the Claimant to benefit from the temporary rules, he had to have benefit periods for winter claims in 2019 or 2020.

[32] The Commission says the Claimant did not have winter claims in either of these periods. It says the Claimant's previous claim for summer fishing benefits was started on October 11, 2020, using the temporary rules even though he qualified for benefits without the rules. It says the Claimant can't use the rules to start a second claim for summer benefits starting April 25, 2021, because the rules can only be used once to start a claim for each season.

[33] It isn't clear why the Commission is calling the Claimant's benefit period starting April 25, 2021, a second summer claim. It is a winter claim, as I set out above.

[34] I agree with the Commission that the temporary rules can't be used to help the Claimant start a claim on April 25, 2021. But not because the Claimant had already seen the benefit of these rules to start his summer claim in October 2020. In fact, the Claimant didn't need these rules to qualify for fishing benefits in October 2020. Both parties agree that the Claimant had enough earnings in his qualifying period to qualify for benefits without the help of the temporary rules.¹³

[35] Rather, I find the temporary rules can't help the Claimant because there is no evidence that he started a winter benefit period in the periods set out in the rules in

¹¹ See section 153.1923(b) of the EI Act.

¹² See 153.1923(2) of the EI Act.

¹³ Section 153.1922 of the EI Act says that "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)." I think this means that the temporary rules are applied only if a fisher doesn't qualify with enough earnings from fishing in his qualifying period.

2019 or 2020. Because he didn't have winter benefit periods established in either of those years, he can't use earnings from those years to help him start a winter claim. So, the temporary rules don't help the Claimant start a claim for benefits on April 25, 2021.

So, was the Claimant entitled to receive benefits from April 25, 2021?

[36] No. I find that the Claimant hasn't proven that he qualified to receive fishing benefits from April 25, 2021. He didn't have enough earnings from fishing in his qualifying period. And he can't benefit from the temporary rules because he had no benefit period started in the same season in 2019 or 2020.

[37] I sympathize with the Claimant, but I can't change the law. This means the Claimant has been paid \$4,760 in benefits that he wasn't entitled to receive.

Conclusion

[38] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section