



Citation: *TB v Canada Employment Insurance Commission*, 2022 SST 109

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

**Decision**

**Appellant:** T. B.  
**Appellant's Representative:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (432043) dated August 24, 2021  
(issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** January 5, 2022

**Hearing participants:** Appellant  
Appellant's Representative

**Decision date:** January 12, 2022

**File number:** GE-21-2058

## 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 18, 2021.

## Overview

[3] The Claimant worked as a fisher from June to September 2020. He applied for fishing benefits in October 2020, and was paid the maximum of 26 weeks from October 11, 2020, to April 10, 2021. He then re-applied for fishing benefits in April 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 \$4,584.

[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.<sup>1</sup>

[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. It says 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 and the Claimant's representative disagree with the Commission's decision to require him to repay EI benefits. He was told by his Member of Parliament and Service Canada agents that he was eligible to receive an additional 10 weeks of

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<sup>1</sup> 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.

benefits. He was told that his last Record of Employment could be used to establish a new claim. He applied on the advice of the Member of Parliament and Service Canada agents only to be later told that he was not entitled to the benefits.

## Issue

[8] I have to decide if the Claimant was entitled to receive fishing benefits from April 18, 2021.

## Analysis

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

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

### – 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 to qualify for fishing benefits.

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 made through fishing over the winter or over the summer.<sup>5</sup>

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

[14] Since this issue concerns the Claimant's claim for fishing benefits from April 18, 2021, I will only explain the qualifying period for a winter claim.<sup>8</sup>

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

- The Sunday of the week in which the September 1<sup>st</sup> 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 31<sup>st</sup> 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 fishing benefits claim before the claim he made for April 18, 2021. He fished from June 1, 2020, to September 26, 2020. He had fishing earnings of \$16,519.86. He applied for fishing benefits on October 19, 2020, and was paid 26

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<sup>5</sup> 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.

<sup>6</sup> See section 8(1) of the EI (Fishing) Regulations.

<sup>7</sup> See section 8(6) of the EI (Fishing) Regulations

<sup>8</sup> See section 8(9) of the EI (Fishing) Regulations.

weeks of benefits from October 11, 2020, to April 10, 2021. Since this claim for benefits was made on October 19, 2020, and the benefit period began on October 11, 2020, this was a summer claim.

[18] The Claimant then applied for fishing benefits on April 22, 2021 to start on April 18, 2021. Since he had made this initial claim on April 22, 2021, this is a winter claim.<sup>9</sup>

[19] The Commission says the Claimant's benefit period for his new claim started on April 18, 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 1<sup>st</sup> 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 31<sup>st</sup> week before the week in which the Claimant made the initial claim for benefits was September 27, 2020.

[21] The law says the latest 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. The Saturday before April 22, 2021 is April 17, 2021.

[23] So, the Claimant's qualifying period is from October 11, 2020, to April 17, 2021.

[24] The Commission says the Claimant needed \$2,500 in fishing earnings to qualify for benefits from April 18, 2021. The Claimant doesn't dispute this is the amount of

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<sup>9</sup> 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 18, 2021.

[25] This means the Claimant has to have earned \$2,500 from fishing from October 11, 2020, to April 17, 2021, to start a claim for fisher benefits on April 18, 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 said he had no earnings from fishing in this period. He last fished on September 26, 2020.

[27] The Claimant didn't have fishing earnings in his qualifying period, so he cannot start a claim for fishing 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.<sup>10</sup>

[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 March 29, 2020, to December 19, 2020; and,

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<sup>10</sup> 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 March 31, 2019, to December 21, 2019.<sup>11</sup>

[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.<sup>12</sup>

[31] Because the Claimant had no earnings to establish a current claim on April 18, 2021, for him 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 temporary rules to start a second claim for summer benefits starting April 18, 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 on April 18, 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 18, 2021. But not because the Claimant had already used 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.<sup>13</sup>

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<sup>11</sup> See section 153.1923(b) of the EI Act.

<sup>12</sup> See 153.1923(2) of the EI Act.

<sup>13</sup> 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.

[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 2019 or 2020 periods set out in the rules. 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 18, 2021.

### **So, was the Claimant entitled to receive benefits from May 2, 2021?**

[36] No. I find that the Claimant hasn't proven that he qualified to receive fishing benefits from April 18, 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 \$4,584 in benefits that he wasn't entitled to receive.

### **Writing off or reducing the debt**

[38] I accept the Claimant's testimony that he questioned Service Canada agents whether he could in fact establish a claim for April 18, 2021. He said he was given the assurance that he could do so, only to be told months later that he was not entitled to those benefits.

[39] The Commission said that it established the April 18, 2021 claim in error.

[40] The law says I do not have any authority to write off a debt owing to the Commission.<sup>14</sup> Only the Commission has the authority to write off or reduce a debt.<sup>15</sup>

[41] Nothing in my decision prevents the Claimant from writing directly to the Commission to ask that the debt be reduced or written off. If he is not satisfied with the Commission's decision, he can appeal to the Federal Court within the time limits for that appeal.

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<sup>14</sup> See section 112.1 of the EI Act

<sup>15</sup> See sections 52 and 56 of the EI Act



[42] Although I cannot direct the Commission, I would recommend that the Commission reconsider whether it can write-off the overpayment, given the Claimant's circumstances and the Commission's agreement that it made an error in processing the claim for benefits.

## **Conclusion**

[43] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section