



Citation: *AG v Canada Employment Insurance Commission*, 2022 SST 157

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

## Decision

**Appellant:** A. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (437389) dated October 25, 2021 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** February 15, 2022

**Hearing participant:** Appellant

**Decision date:** February 25, 2022

**File number:** GE-21-2509

## Decision

[1] I am dismissing the appeal.

[2] I agree with the Canada Employment Insurance Commission (Commission) that the Claimant cannot cancel his benefit period. The reason is that the Claimant hasn't shown that he can establish a new benefit period.

## Overview

[3] This appeal is about whether the Claimant can cancel his benefit period.

[4] The Claimant works in both fishing and non-fishing employment.

[5] In spring 2021, he called Service Canada to see if he had worked enough hours to qualify for regular benefits under the *Employment Insurance Act* (EI Act).<sup>1</sup> He hadn't. But he discovered he qualified for fishing benefits. So following the advice he'd been given, he applied for and established a benefit period for fishing benefits as of May 2, 2021 (the May benefit period).

[6] The Claimant didn't realize that establishing the May benefit period, which was for fishing benefits, would affect his qualifying period for regular benefits. That summer, he worked in non-fishing employment in hopes of accumulating 120 hours before the end of September 2021, so he could qualify for regular benefits.

[7] Thinking he had worked enough hours to qualify for regular benefits, the Claimant applied for regular benefits on September 13, 2021.

[8] A few days later, he called Service Canada. The agent told him he qualified for regular benefits. But, when the Commission made a decision on his claim, it decided that the Claimant didn't have enough hours to qualify for regular benefits. As he couldn't

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<sup>1</sup> Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

establish a new benefit period, by law, he wasn't allowed to cancel the May benefit period.

## Issue

[9] Can the Claimant cancel the May benefit period?

## Analysis

### Cancelling a benefit period

[10] A claimant cannot start a new benefit period if they have an existing one.<sup>2</sup> So, when the Claimant applied for regular benefits in September 2021, the Commission had to decide if the Claimant could cancel the ongoing May benefit period.

[11] There are conditions to cancel a benefit period.<sup>3</sup>

[12] One of the conditions is that the Claimant qualifies to receive benefits. This is the condition the Commission says the Claimant doesn't meet.

[13] So to cancel the May benefit period, the Claimant must show that he qualified to receive benefits as of September 12, 2021.<sup>4</sup> This is when his benefit period would have started given his application date of September 13, 2021.<sup>5</sup>

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<sup>2</sup> See section 10(3) of the EI Act.

<sup>3</sup> Section 10(8) of the EI Act says that a benefit period ends when any of the following happen: 1. No further benefits are payable. 2. The benefit period is otherwise at an end. 3. The claimant asks to end the benefit period, makes a new initial claim for benefits, and *qualifies to receive benefits*. The May benefit period ended on December 4, 2021. So condition #3 applies to the Claimant.

<sup>4</sup> He has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he qualifies for benefits.

<sup>5</sup> Section 10(1) of the EI Act explains when a benefit period starts.

## Does the Claimant qualify for benefits?

### – How to qualify for regular benefits?

[14] To qualify for regular benefits, the Claimant has to prove that he has enough hours to qualify. The Claimant must have worked those hours during a certain timeframe called the “qualifying period.”<sup>6</sup>

### – The qualifying period

[15] The Claimant’s qualifying period is from May 2, 2021, to September 11, 2021.

[16] The Commission says the Claimant’s qualifying period starts on May 21, 2021.<sup>7</sup> The Claimant says the qualifying period should be the year before he applied for benefits in September 2021.

[17] The law says that the qualifying period is the shorter of:

- The 52-week period immediately before the start of the benefit period, if one is established (which would have been September 12, 2021).
- The period that starts on the first day of the immediately preceding benefit period, and ends at the end of the week before the beginning of the new benefit period.<sup>8</sup>

[18] So the Claimant’s qualifying period is from May 2, 2021, to September 11, 2021, because:

- The first day of his last benefit period is May 2, 2021.<sup>9</sup>

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<sup>6</sup> See section 7 of the EI Act.

<sup>7</sup> See page GD10-1.

<sup>8</sup> See section 8(1) of the EI Act.

<sup>9</sup> Although some of the Commission’s evidence and representations suggest the May benefit period started on May 11, 2021, or May 21, 2021, most of the evidence seems to point at a start date of May 2, 2021. See for example, May 11, 2021, on page GD3-30, May 21, 2021, on page GD10-1, and May 2, 2021, on pages GD3-1 and GD3-31. Of all three dates, the only date that is a Sunday is May 2, 2021. Benefit periods start on Sundays.

- The last day of the week before the new benefit period would have started, if one could have been established, is September 11, 2021.
- The period between May 2, 2021, and September 11, 2021, is shorter than the 52-week period before September 12, 2021.

– **Hours**

[19] Next I have to consider how many hours the Claimant has during his qualifying period.

[20] There are three records of employment (ROE) in the file. They show:

<b>Record of Employment</b>	<b>Period</b>	<b>Hours</b>	<b>Includes hours in qualifying period</b>
W81099510	December 31, 2019, to March 17, 2021	86	No
W84606153	March 25, 2021, to August 24, 2021	82	Yes
W86481097	August 26, 2021, to November 15, 2021	38	Yes

[21] The ROEs show that the Claimant has 120 hours between March 25, 2021, and November 15, 2021. Since some of those hours were worked outside the Claimant's qualifying period (May 2, 2021, to September 11, 2021), he has fewer than 120 hours during his qualifying period. Stated another way, since the Claimant worked some of those 120 hours before and after his qualifying period, he cannot have 120 hours during his qualifying period. For instance, ROE W84606153 starts on March 25, 2021. It shows he worked during the first and second pay periods.<sup>10</sup> Since he worked those hours before his qualifying period started, those hours cannot be counted towards the hours he needs to qualify for benefits.

[22] The Commission says the Claimant has 61 hours of insurable employment in his qualifying period starting on May 21, 2021, based on ROE W84606153.<sup>11</sup> Since the Commission started the qualifying period on the wrong date, didn't specify when the

<sup>10</sup> See pay periods 10 and 11 as shown on the record of employment on page GD3-28.

<sup>11</sup> See page GD10-1.

qualifying period ended, and ignored ROE W86481097, the Commission cannot be correct.

[23] The Claimant said he wasn't sure about how many hours he has.

[24] Besides the hours the Claimant actually worked, the Claimant has an additional 300 hours during his qualifying period. This is one of the temporary measures put in place to help people qualify for regular benefits during COVID-19. It deems that people have an additional 300 hours in their qualifying period.<sup>12</sup>

– **The Claimant needs 420 hours to qualify for regular benefits**

[25] I accept that the Claimant needs 420 hours to qualify for regular benefits. This is what the Commission says, and the Claimant doesn't dispute it.

– **The Claimant doesn't have enough hours to qualify for regular benefits**

[26] The Claimant had to work 120 hours during his qualifying period so that with the extra 300 hours, he would have the necessary 420 hours.

[27] Since the Claimant didn't work 120 hours during his qualifying period, he doesn't have enough hours to qualify for regular benefits.

[28] The Claimant argues that all his hours should be considered because the May benefit period was established with his fishing earnings, not his hours. But the reason all his hours can't be considered isn't because they were used to establish his fishing claim. The reason they can't be considered is they fall outside his qualifying period.

– **The Claimant doesn't qualify for fishing benefits**

[29] I also have to consider whether the Claimant could cancel his benefit period by establishing a fishing claim.

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<sup>12</sup> See section 153.17 of the EI Act, which applied when the Claimant applied for benefits on September 13, 2021.

[30] I accept that the Claimant doesn't qualify for a fishing claim as of September 12, 2021. This is what both parties say. I see no evidence that would call this into question.

## **The Claimant's arguments**

### **– The December 2021 decision**

[31] Shortly after the Claimant filed his appeal, he stated that he was appealing the Commission's December 2021 decision.<sup>13</sup> But at the pre-hearing conference held on January 18, 2022, the Commission clarified that the December 2021 decision was an initial decision. It hadn't been reconsidered. As I only have authority to hear appeals about reconsideration decisions, I have only considered the October 25, 2021, reconsideration decision.

[32] Once the Commission reconsiders its December decision, if the Claimant isn't satisfied with the result, he may appeal it to the Tribunal.

### **– The Claimant received conflicting and confusing advice.**

[33] The Claimant says Service Canada gave him conflicting and confusing advice. He believes the agents gave no regard to the importance of the information they gave him.

[34] My jurisdiction is to decide appeals about the entitlement to benefits. I don't have the authority to oversee how Service Canada and the Commission manage their files, including the advice they give over the telephone.

[35] Despite the advice the Claimant may have received, I still have to apply the law. I don't have the power to find the Claimant qualifies to receive benefits if he doesn't meet the requirements under the EI Act.

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<sup>13</sup> See page GD5-1.

## **Conclusion**

[36] As the Claimant can't establish a benefit period as of September 12, 2021, he can't cancel the May benefit period.

[37] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section