



Citation: *RD v Canada Employment Insurance Commission*, 2022 SST 677

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

**Decision**

**Appellants:** R. D.  
B. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decisions (442135) and (442137) dated December 14, 2021 (issued by Service Canada)

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**Tribunal member:** Leanne Bourassa

**Type of hearing:** Teleconference

**Hearing date:** January 28, 2022

**Hearing participants:** Appellants

**Decision date:** February 2, 2022

**File number:** GE-22-58 and GE-22-63

## **Decision**

[1] The appeals are dismissed.

[2] The Claimants unfortunately did not have enough insurable earnings from employment as fishers to qualify for Employment Insurance (EI) benefits.

## **Overview**

[3] The Claimants applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that they did not have enough earnings as fishers to qualify.

[4] I have to decide whether the Claimants had enough earnings from employment as fishers to qualify for EI benefits.

[5] The Commission says that the Claimants don't have enough earnings from fishing because they needed \$2,500.00 each and they only had \$2,018.00 and \$2,131.70 respectively.

[6] The Claimants say that because of COVID-19 their fishing season was shorter than usual. Their buyer couldn't buy or sell their clams and there were no tourists. Without EI benefits, they will not be able to pay for equipment necessary for the next fishing season.

## **Matter I have to consider first**

### **I am joining two claims**

[7] The two Claimants in this case are husband and wife. Their claims are essentially the same and based on the same fishing experience. The Commission has denied them benefits for the same reasons. To act as quickly and fairly as possible, I heard the two appeals together and am issuing this decision dealing with both appeals.

## **Issue**

[8] Have the Claimants worked enough hours to qualify for EI benefits?

## **Analysis**

### **How to qualify for benefits**

[9] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>1</sup> The Claimants have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that they qualify for benefits.

[10] To qualify when fishing, you need to show you do not qualify for benefits under the regular EI rules and that you have earned at least \$2,500 of insurable earnings from fishing alone, within a certain timeframe. This timeframe is called the “qualifying period.”<sup>2</sup>

[11] The Claimants applied for a summer fishing claim, with a qualifying period being February 29, 2021 to October 2, 2021.<sup>3</sup> I have reviewed the law, including special measures in place to facilitate access to benefits for fishers affected by the COVID-19 pandemic.<sup>4</sup> I see no evidence that contradicts this qualifying period or would allow it to be extended, so I accept that it is correct.

### **The Claimants do not qualify for regular EI benefits**

[12] That Claimants admit they did not have any hours of insurable employment outside of fishing that would allow them to qualify for benefits under the regular EI rules. So I have to look only at their earnings from fishing.

### **The Claimants have not accumulated enough income from fishing**

[13] The Claimants say that the amounts of income that are reported on their “Records of Income – Self-Employed Fisher” are correct. These records cover the period of August 15, 2021 to September 18, 2021. For R. D., the record shows a total of \$2,018.18 of insurable earnings from fishing. M. D.’s record shows a total of \$2,131.70.

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<sup>1</sup> See section 48 of the EI Act.

<sup>2</sup> See section 8(2) of the Employment Insurance (Fishing) Regulations.

<sup>3</sup> See section 8(4) of the Employment Insurance (Fishing) Regulations.

<sup>4</sup> In particular section 153.1924 of the Employment Insurance Act.

[14] There are no other “Records of Employment – Self-Employed Fisher” in evidence and the Claimants confirm that there is no other income from fishing in their qualifying period.

[15] I believe the Claimants when they say that this year was extremely difficult for fishing. It is clear that the COVID-19 pandemic would have had an effect on fishing due to the lack of tourists and buyers for their products. They testified that their usual buyer could not buy their clams as much as in the past and while they tried to find other buyers to work with, it was not possible.

[16] Unfortunately, EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits. These qualifying requirements do not leave room for discrepancies and the Commission has no discretion to make exceptions in applying those requirements.<sup>5</sup>

[17] In this case, the Claimants don’t meet the requirements, so they don’t qualify for benefits. While I sympathize with their situation, I can’t change the law.<sup>6</sup>

## **Conclusion**

[18] The Claimants don’t have enough insurable earnings from employment as fishers to qualify for benefits.

[19] This means that the appeal is regrettably dismissed.

Leanne Bourassa  
Member, General Division – Employment Insurance Section

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<sup>5</sup> See *Canada (Attorney General) v. Lévesque*, 2001 FCA 304

<sup>6</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.