



Citation: *ET v Canada Employment Insurance Commission*, 2022 SST 1045

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

## Decision

**Appellant:** E. T.  
**Representative:** P. L. (represented at the hearing by A. N.)

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Marcus Dirnberger

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (458757) dated February 20, 2022  
(issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference  
**Hearing date:** August 24, 2022  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative

**Decision date:** October 10, 2022  
**File number:** GE-22-1239

## Decision

[1] The appeal is dismissed. The Tribunal agrees with the Canada Employment Insurance Commission (Commission).

[2] The Appellant (Claimant) does not qualify for Employment Insurance (EI) summer fishing benefits in 2021. He doesn't qualify under the regular rules because he doesn't have any earnings in his qualifying period. He doesn't qualify under the temporary measure because he can't use it a second time.

## Overview

[3] The Claimant is a fisher. He wants to start an EI summer fishing claim as of October 31, 2021. He hasn't fished since 2019.

[4] The Commission decided that the Claimant couldn't establish an EI summer fishing claim because he didn't have any fishing earnings during his qualifying period.

[5] The Claimant agrees that he doesn't have any fishing earnings during his qualifying period. He wants to rely on the "reach back program"— a temporary measure under the *Employment Insurance Act* to help fishers receive benefits during the COVID-19 pandemic.

[6] The Commission says the Claimant can't use the temporary measure because he used it to qualify for EI summer fishing benefits in 2020.

[7] The Claimant says that he may not qualify under the law, but Service Canada must be held accountable for misinformation on its web site.

## Matter I have to consider first

### – Post hearing submissions

[8] The Commission wanted to make post-hearing submissions. Although I had set a filing deadline (GD7), I agreed to give the Commission some time to make post-hearing

submissions. The Claimant wasn't prejudiced by this because I gave him time to respond.

[9] The Commission filed submissions (GD9). The Claimant didn't file a response.

## **Issue**

[10] Can the Claimant establish an EI summer fishing claim as of October 31, 2021?

## **Analysis**

[11] The Claimant wants to start an EI summer fishing claim as of October 31, 2021.<sup>1</sup>

[12] To do this under the regular rules, the Claimant has to prove two things:

- He does not qualify for EI regular benefits
- He has at least \$2,500 of fishing earnings.<sup>2</sup>

### **Does not qualify for EI regular benefits**

[13] The Claimant meets this first condition. There is no evidence in the file that he qualifies for EI regular benefits.

### **\$2,500 of fishing earnings**

[14] The Claimant doesn't meet this second condition.

[15] The \$2,500 of fishing earnings must be earned during a specific period of time called the qualifying period. Earnings that fall outside the qualifying period cannot be used to establish a benefit period.

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<sup>1</sup> See his application for benefits, pages GD3-4 and GD3-10 of the appeal file.

<sup>2</sup> By regular rules, I mean the rules before and after the temporary measures for COVID-19 were enacted. See section 8(2) of the *Employment Insurance (Fishing) Regulations* (Fishing Regs). The claimant has to prove this on a balance of probabilities.

[16] The Claimant didn't fish in 2021, so he can't have fishing earnings in his qualifying period from April 4, 2021, to November 6, 2021.<sup>3</sup>

[17] So, unless the Claimant can use the temporary measure in section 153.1923 of the *Employment Insurance Act*, he can't establish a benefit period for an EI summer fishing claim in 2021.

### **Temporary measure (reach back)**

[18] Section 153.1923 of the *Employment Insurance Act* is a temporary measure that lets fishers use earnings from previous seasons to start an EI fishing claim. The section can be used *once* to start a summer fishing claim and *once* to start a winter fishing claim. The Claimant refers to the temporary measure as the reach back program.

[19] I find that the Claimant relied on the temporary measure to establish an EI summer fishing claim in October 2020. As the Claimant didn't fish in 2020, he couldn't have had enough earnings to qualify under the regular rules. This means he used the temporary measure to start his 2020 EI summer fishing claim. The parties don't dispute this.

[20] As the temporary measure was used to start an EI summer fishing claim in 2020, it can't be used to start an EI summer fishing claim in 2021. The law is clear about this.<sup>4</sup>

[21] The Claimant provided the Tribunal with a copy of one of its unpublished decisions.<sup>5</sup> That decision isn't relevant to the appeal before me because it has different facts. According to the Commission's submissions in that matter, the first time that claimant needed the temporary measure to establish an EI fishing claim was in 2021.<sup>6</sup> That claimant didn't need the temporary measure in 2019 or 2020, so it was available to him in 2021. This isn't the case for the Claimant. The Claimant needed the temporary measure to start his 2020 EI summer fishing claim so it wasn't available to him in 2021.

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<sup>3</sup> The qualifying period is determined by section 8(4) of the Fishing Regs. The parties agree with these dates.

<sup>4</sup> See section 153.1923(2) of the *Employment Insurance Act*.

<sup>5</sup> The decision is on page GD8-2 of the appeal file.

<sup>6</sup> See page GD8-4 of the appeal file.

[22] This means the Claimant can't establish a benefit period for an EI summer fishing claim in October 2021. He doesn't qualify under the regular rules because he doesn't have any fishing earnings in his qualifying period. He can't qualify with the temporary measure because he already used it the one time allowed by law.

### **The Claimant's position**

[23] The Claimant now understands that by law the temporary measure can be used only once. But he says that the general knowledge in the fishing community, including the United Fishermen and Allied Workers' Union, the Commercial Fishing Caucus, and Fisheries and Oceans Canada, was that the temporary measure could be used to establish any number of claims between 2019 and 2021, as long as the claims were started by December 18, 2021.

[24] The Claimant feels that the Service Canada web site and its representatives didn't provide accurate or complete information to the fishing community.<sup>7</sup> The misrepresentations caused despair, panic and undue hardship in the fishing industry across Canada.

[25] The Claimant wants Service Canada to be held accountable for the misinformation. He wants a statement from the Tribunal that there is a systemic problem with the information Service Canada provided. He also thinks that Service Canada's decision letters don't provide enough information.

[26] I agree that information about how many times the temporary measure could be used would have been helpful for those relying on the Service Canada web site. But my decision is about whether the Claimant qualifies for EI fishing benefits, not whether Service Canada provided enough information on its web site.

[27] The Commission is correct that information from the web site cannot change my decision. I have to base my decision on the law – not the web site.

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<sup>7</sup> The Claimant provided excerpts from the web site. They are on page GD2-14 of the appeal file.

[28] I agree with the Claimant that more information in his decision letters might have been useful.<sup>8</sup> The decision letters explained the Commission's decision in plain language. This is a good thing. But the letters didn't say what sections of law were applied. From the file, it seems the Commission didn't tell the Claimant what sections of law it applied until after the Claimant filed his appeal with the Tribunal. Knowing the relevant sections of law earlier, might have helped the Claimant understand and address the Commission's position before the appeal, and might have been useful in framing his appeal. But again, this isn't what my decision is about, and is outside my jurisdiction.

[29] None of the Claimant's arguments change the fact that he doesn't qualify for EI summer fishing benefits.

## **Conclusion**

[30] The Claimant can't establish a benefit period for EI summer fishing benefits in 2021 because:

- he doesn't have any fishing earnings during his qualifying period, and
- the law prevents him from using the temporary measure a second time.

[31] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division—Employment Insurance Section

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<sup>8</sup> The decision letters are on pages GD2-11 and GD2-9 of the appeal file.