



Citation: *KL v Canada Employment Insurance Commission*, 2022 SST 1036

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: K. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (460391) dated March 21, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Videoconference

Hearing date: August 30, 2022

Hearing participant: Appellant

Decision date: October 3, 2022

File number: GE-22-1339

Decision

[1] The appeal is allowed. The Canada Employment Insurance Commission (Commission) should not have changed the Claimant's weekly benefit rate. Her weekly benefit rate is \$584.

Overview

[2] The Claimant is a fisher. She established an Employment Insurance (EI) fishing benefit period in October 2020, and again in October 2021.

[3] This appeal is about the Claimant's weekly benefit rate for the 2021 benefit period. The Commission set the Claimant's weekly benefit rate at \$584. After the Claimant received benefits at this rate, the Commission changed her weekly benefit rate to \$300.

[4] The Commission says it changed the rate because the original rate of \$584 was based on a temporary measure to help claimants during the COVID-19 pandemic. It says that it shouldn't have used the temporary measure because the temporary measure had already been applied to the Claimant's 2020 benefit period.

[5] The Claimant says that the Commission shouldn't have changed the weekly benefit rate because she didn't need the temporary measure to establish her 2020 benefit period. The Commission confirmed that the Claimant didn't need the temporary measure to establish her 2020 benefit period, and that the measure had no impact on her benefit rate.

[6] The Commission is right that the temporary measure can only be used once. But the temporary measure is *only* used when it is *needed* to establish a benefit period.¹ As the Claimant didn't need the temporary measure to establish her benefit period in 2020, by law, the temporary measure couldn't have been applied. So the temporary measure was available to help the Claimant with her 2021 claim.

¹ I am talking about the temporary measures that apply to EI *fishing* benefits, not the temporary measures that apply to EI *regular* benefits.

[7] This means the Commission was right when it used the temporary measure to set her weekly benefit rate at \$545. It was wrong when it changed her weekly benefit rate to \$300.

Issue

[8] Can the temporary measure set out in section 153.1923 of the *Employment Insurance Act (Act)* be used to calculate the Claimant's 2021 weekly benefit rate for EI fishing benefits?

Analysis

[9] A claimant's weekly benefit rate is calculated using the regional unemployment rate and the claimant's earnings.

[10] The Claimant doesn't take issue with the Commission's mathematical calculations, or the regional unemployment rate used by the Commission.

[11] She says the temporary measure should be used to increase her 2021 earnings, because the temporary measure wasn't needed for her 2020 benefit period. She says the Commission was right when it set her benefit rate at \$545.

What the law says

[12] Section 153.1923(1) of the Act was implemented to help fishers during the COVID-19 pandemic. This section allows a weekly benefit rate to be calculated using the highest earnings from the current season, the 2019-2020 season and the 2018-2019 season.²

[13] Section 153.1923(2) of the Act says that a fisher may use the temporary measure to *establish* one benefit period for a summer fishing claim and one benefit period for a winter fishing claim.³

² The actual periods are set out in section 153.1923(1) of the *Employment Insurance Act (Act)*. As this decision pertains to a summer fishing claim, I have used the general dates for a summer fishing claim.

³ See section 153.1923(2) of the Act for the actual wording.

[14] Section 153.1922 of the Act says that a fisher who doesn't qualify for EI fishing benefits under the regular rules can still receive benefits if they can qualify using the highest rate of earnings determined under section 153.1923.⁴

When the temporary measure is applied

– **Temporary measure only applies when needed to qualify for EI fishing benefits**

[15] Reading sections 153.1922 and 153.1923 of the Act together, I find that the temporary measures are applied only when the claimant needs them to qualify for EI fishing benefits.⁵

[16] There is also a temporary measure to help claimants qualify for EI regular benefits. The temporary measure for EI regular benefits applies even if the claimant doesn't need it to qualify for benefits. The difference in application of the temporary measures for EI fishing benefits and EI regular benefits is because the legislature used different wording for the two measures.

[17] The temporary measure for EI fishing benefits is linked to the establishment of a benefit period. The temporary measure for EI regular benefits is not.

[18] Because the Claimant qualified for EI fishing benefits under the regular rules (in other words, without the temporary measure) in October 2020, by law, the temporary measure was not applied.⁶

[19] This means that the temporary measure was available to the Claimant to establish her October 2021 fishing claim.

⁴ By regular rules I mean sections 8(2)(b) or 8(7)(b) of the *Employment Insurance Fishing Regulations* (Fishing Regs).

⁵ A similar approach was mentioned by the Tribunal in these cases: *DD v Canada Employment Insurance Commission*, 2021 SST 829, paragraph 39, *TB v Canada Employment Insurance Commission*, 2022 SST 109, footnote 13, *RS v Canada Employment Insurance Commission*, 2021 SST 883, footnote 13. I am not bound by these decisions, but find the reasoning on this point persuasive.

⁶ By regular rules I mean under section 8(2)(b) or 8(7)(b) of the Fishing Regs.

The Claimant's weekly benefit rate

[20] The Claimant's weekly benefit rate is \$584.

[21] This is the rate the Commission set using the temporary measure. The Claimant doesn't dispute the information the Commission used to set this rate or its mathematical calculations. I see nothing in the file that would call this rate into question.⁷

Conclusion

[22] The Claimant's weekly benefit rate is \$584.

[23] The appeal is allowed.

Angela Ryan Bourgeois

Member, General Division – Employment Insurance Section

⁷ This is the calculation: **\$20,173** (2019 earnings from page GD3-50) / **19** (divisor for 8.3% regional unemployment rate) x **55%** = **\$584** (rounded the nearest dollar as required by law).