



[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 1144

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

Decision

Appellant: S. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (550569) dated December 2,
2022 (issued by Service Canada)

Tribunal member: Denis Bourgeois

Type of hearing: In person
Hearing date: April 27, 2023
Hearing participant: Appellant

Decision date: June 7, 2023
File number: GE-22-4275

Decision

[1] The appeal is dismissed. The Tribunal agrees with the Commission.

[2] The Appellant was working full work weeks starting May 2, 2022. This means that he may not be able to receive Employment Insurance (EI) benefits.

Overview

[3] The Appellant worked as an employee for a fisher. His last day of work was July 3, 2021. He applied for benefits on October 3, 2021. He received benefits until the week of April 24, 2022.

[4] He called the Canada Employment Insurance Commission (Commission) in April to say that he was going to become a self-employed fisher starting May 2, 2022. He asked the Commission to end his benefit period. It told him that it wasn't necessary. Because of this advice, the Appellant continued to file his reports with the Commission.

[5] The Commission found that, because the Appellant was a self-employed fisher, he was starting a business. It found that the Appellant worked full work weeks for the period in question. It told the Appellant that it could not pay him EI benefits as of May 2, 2022.

[6] The Appellant disagrees. He argues that he should receive fishing benefits. He says that he is a self-employed fisher and that he started a business but that he was given poor advice when he was told to file his reports. He says he wanted to end his benefit period for regular benefits.

Issues

[7] Has the Appellant shown that he was unemployed?

[8] Could he end his benefit period for regular benefits in favour of fishing benefits?

Analysis

[9] The Appellant never claimed to be unemployed after May 2, 2022. At the hearing, he said that he called the Commission to say that he was going to become a self-employed fisher on that date.

[10] Nevertheless, I will analyze the issue of unemployment as it is the main issue under appeal based on the December 2, 2022, reconsideration decision.

[11] If you are involved in a business, you may not be entitled to EI benefits.

[12] The law says that you can receive EI benefits for each week you are unemployed.¹ A week of unemployment means any week you don't work a full work week.²

[13] Also, if you are involved in a business, the law assumes that you work full work weeks.³ So, you can't receive EI benefits.⁴

Exception if your involvement is limited

[14] There is an exception if your level of involvement in the business is limited.⁵

[15] The exception applies if the Appellant's level of involvement is so limited that a person would not normally rely on that business as their main means of earning a living.⁶

¹ Section 9 of the *Employment Insurance Act* (Act) sets out this rule.

² See section 11 of the Act.

³ See section 30(1) of the *Employment Insurance Regulations*.

⁴ See *Marlowe v Canada*, 2009 FCA 102.

⁵ See section 30(2) of the *Employment Insurance Regulations*. It refers to a claimant being involved to "a minor extent" (in other words, their involvement is limited). Also see *Martens v Canada (Attorney General)*, 2008 FCA 240.

⁶ See section 30(2) of the *Employment Insurance Regulations* and *Martens v Canada (Attorney General)*, 2008 FCA 240.

[16] The Appellant has to prove that his involvement was so limited that the exception applies.⁷ The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his level of involvement was limited.

Six factors for deciding level of involvement

[17] To decide whether the exception applies, I have to consider the following six factors:⁸

- a) How much time did the Appellant spend on his business?
- b) How much had the Appellant invested in his business, and what were those investments (such as money, property, goods, and resources)?
- c) Financially, has the Appellant's business been a success or failure?
- d) Was the Appellant's business meant to be ongoing?
- e) What was the nature of the Appellant's business?
- f) Did the Claimant/Appellant intend to and want to find another job quickly?

– Time spent

[18] The Appellant explained to the Commission that he was doing 70 or more hours per week from May 2, 2022, to July 1, 2022.⁹ He was working from Sunday to Saturday. The amount of time that he spent on the business doesn't show limited involvement.¹⁰

⁷ See *Canada (Attorney General) v Falardeau*, A-396-85; and *Lemay v Canada Employment Insurance Commission*, A-662-97.

⁸ Section 30(3) of the *Employment Insurance Regulations* sets out these six factors. This decision paraphrases those six factors for plain language.

⁹ See GD3-26.

¹⁰ See GD3-26.

[19] I find that the Appellant was working full weeks at his fishing business as of May 2, 2022. The Appellant explained that, when it isn't the fishing season, equipment has to be prepared and maintained before the fishing season.¹¹

– **Investments**

[20] The nature and amount of the Claimant/Appellant's investments (such as money, property, goods, and resources) doesn't show limited involvement because he took out a loan of \$700,000. He has a fishing boat and fishing equipment. He bought a \$50,000 engine.¹²

[21] I find that the investments in the business weren't of a minor extent. These investments were meant to contribute to the success of the business.

– **Financial success or failure**

[22] The financial situation of the Appellant's business doesn't show limited involvement because the business has a gross annual income of \$149,000. He has to spend about \$12,000 on gas for his boat for the season and \$30,000 on equipment. He has to pay insurance for his boat.¹³

[23] I find that the Claimant's self-employment income can be his principal means of livelihood during that period.¹⁴

– **Ongoing business**

[24] The Claimant/Appellant's business was meant to be ongoing. This doesn't show limited involvement because the Appellant was well aware of the benefits and risks of his business.

¹¹ See GD3-26.

¹² See GD3-26.

¹³ See GD3-26.

¹⁴ See *Martens v Canada (Attorney General)*, 2008 FCA 240.

[25] But the nature of the business makes it impossible to determine whether the business will be able to continue to be viable.

– **Nature of the Appellant’s business**

[26] The Appellant’s business is fishing. He bought his father’s business. He had worked there as an employee for several years. This doesn’t show limited involvement. It is clear that he was well aware of the nature of the business because of his experience in the field. Becoming an owner would be a natural step for him.

– **Intention and willingness to find another job quickly**

[27] As of May 2, 2022, the Appellant was working full-time in his business. That is when the Commission imposed a disentitlement. There is no evidence that he intended to or wanted to find another job. His intention was to make his business a success. This doesn’t show limited involvement.

[28] I find that the Appellant hasn’t shown an intention or willingness to find a job quickly.

So, was the Appellant’s level of involvement limited enough?

[29] The Appellant’s level of involvement wasn’t so limited that the exception applies. A person would normally rely on this business as a main means of earning a living.

[30] I have considered all six factors mentioned above. Two factors are especially important. Case law says that how much time you spend on the work and whether you intend to or want to find another job quickly are important factors to consider.¹⁵

[31] With all of this in mind, I find the exception doesn’t apply to the Appellant’s business.

¹⁵ See *Charbonneau v Canada (Attorney General)*, 2004 FCA 61.

[32] The Appellant was working full work weeks. This means that the Appellant could not receive regular benefits because there weren't weeks where he was unemployed.

[33] The Federal Court of Appeal says that it is highly commendable for anyone to try to make new work for themselves or start their own business. But the idea behind the EI plan is to offer temporary benefits to people who are unemployed and looking for work. Unfortunately, the Claimant/Appellant's efforts fall outside the scope of the EI plan.¹⁶

Could the Appellant end his benefit period for regular benefits in favour of fishing benefits?

[34] The Appellant could not end his benefit period for regular benefits in favour of fishing benefits.

[35] The Commission disentitled him. He hadn't shown that he was unemployed as of May 2, 2022. However, the Appellant has always explained that he simply wanted to end his regular benefits. After that, he wanted to start fishing benefits.

[36] At the hearing, the Appellant explained that he called the Commission to say that he was going to become a self-employed fisher. He said that he had bought his father's business. He asked the Commission to end his regular benefits for that reason.

[37] He said that the Commission agents told him that it was not the right thing to do. They told him to register as a self-employed fisher but to keep filing his reports.

[38] The Appellant explained that everything was blocked after that. He decided to stop filing his reports thinking that his regular benefits would simply be cancelled.

[39] The Commission says that a regular claim can't be cancelled to establish a claim as a fisher.

¹⁶ See *Canada (Attorney General) v Jouan*, A-366-94.

[40] Unfortunately for the Appellant, I agree with the Commission.

[41] According to the Tribunal's Appeal Division:

[42] Pursuant to section 10(8)(d) of the *Act*, a request for an early termination of the benefit period can only be granted if the claimant immediately qualifies for a new claim under Part I of the *Act*; or as a self-employed person under Part VII.1 of the *Act*. Since fishing benefits are not included under these Parts of the *Act*, it follows that a regular benefit period cannot be terminated in favor of a fishing claim.¹⁷

[43] To qualify for fishing benefits, a claimant must be disentitled from receiving EI regular benefits.¹⁸

[44] According to a Commission attestation certificate, the Appellant had six weeks of entitlement to benefits that had not been paid.¹⁹ The last week paid was the week of April 24, 2022.

[45] It is unfortunate that the Appellant received information from the Commission that was not clear. It was a long and frustrating process for him. He thinks he was given poor advice. The Federal Court of Appeal has said that misinformation by the Commission is no basis for relief from the operation of the *Employment Insurance Act*. It has also said the law has to be followed even if the Commission made a mistake.²⁰

[46] I am sympathetic to the Claimant's circumstances, but, as tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.²¹

¹⁷ See *Canada Employment Insurance Commission v JF*, 2016 SSTADEI 128.

¹⁸ See section 8(7) of the *Employment Insurance (Fishing) Regulations*.

¹⁹ See GD3-33.

²⁰ See *Canada (Attorney General) v Shaw*, 2002 FCA 325; and *Robinson v Canada (Attorney General)*, 2013 FCA 255.

²¹ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

Conclusion

[47] I find that the Appellant was working full work weeks, so he wasn't unemployed.

[48] I find that he could not end his regular benefits in favour of fishing benefits.

[49] This means that the appeal is dismissed.

Denis Bourgeois

Member, General Division – Employment Insurance Section