



Citation: *JL v Canada Employment Insurance Commission*, 2023 SST 82

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (545028) dated October 19, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: November 25, 2022

Hearing participant: Appellant

Decision date: February 1, 2023

File number: GE-22-3492

Decision

[1] The appeal is dismissed.

[2] The Appellant (Claimant) can't receive the five extra weeks for seasonal workers because he doesn't meet all the conditions as set out in the *Employment Insurance Act* (Act).

Overview

[3] The Claimant is a commercial fisher.

[4] He applied for EI regular benefits on July 31, 2022, and a benefit period was established as of that day.

[5] The Canada Employment Insurance Commission (Commission) determined that the Claimant was entitled to 21 weeks of EI regular benefits.

[6] The Claimant says that he is entitled to those 21 weeks, plus five extra weeks because he is a seasonal worker.

[7] I have to decide if the Claimant meets the conditions to get the five extra weeks of EI benefits.

Issue

[8] Can the Claimant receive the five additional weeks available to seasonal workers?

Analysis

[9] There is no dispute that under the normal rules, the Claimant is entitled to a maximum of 21 weeks of EI regular benefits.

[10] The Claimant says that he should get an extra five weeks because he is a seasonal worker.

[11] The Commission says that the Claimant isn't entitled to the extra five weeks because he doesn't meet the conditions under the law.

– **The seasonal worker exception**

[12] To receive an additional five weeks of EI benefits, the Claimant must prove that he meets these four conditions:

- a) Established a claim for benefits between September 26, 2021, and October 29, 2022
- b) Resides in a region set out in Schedule VI
- c) Established at least three benefit periods during which **regular** benefits were paid or payable in the 260 weeks (five years) before the start of the current benefit period
- d) Have at least two of those previous benefit periods start at about the same time of year as the current benefit period¹

[13] The law says that "starting at around the same time of year" means within eight weeks – eight weeks before or eight weeks after.²

[14] There is no dispute that the Claimant meets the first three conditions.³

[15] The Commission says the Claimant doesn't meet the last condition. The Claimant argues that if he doesn't meet the last condition, it is because of circumstances outside of his control, like CERB and bad weather affecting the fishing season.

¹ See section 12(2.3) to (2.5) of the *Employment Insurance Act* (Act) for the exact wording. In its written representations, the Commission talks about Pilot Project No. 21. But for benefit periods between September 26, 2021, and October 28, 2023 (like the Claimant's benefit period), the relevant section of law is section 12(2.3) of the Act. Supplementary Record of Claim on page GD3-20 shows that the Commission applied the correct law.

² See section 12(2.5) of the Act.

³ See worksheet on page GD3-31, and page GD4-2.

– **The Claimant doesn't meet the last condition**

[16] I agree with the Commission that the Claimant doesn't meet the last condition – having at least two benefit periods start around the same time of year as the current benefit period. Only benefit periods in the last five years where regular benefits are paid or payable count.

[17] The Claimant's current benefit period started on July 31, 2022.

[18] In the last five years, the Claimant established claims during which **regular** benefits were paid or payable on these dates:

- October 3, 2021
- October 4, 2020
- September 8, 2019

[19] To meet the last condition, at least two of these benefit periods must have started within eight weeks of July 31, 2022.

[20] Eight weeks before and eight weeks after each of these start dates is:

8 Weeks Before	Start of Claim	8 Weeks After	Within 8-week window?
August 8, 2021	October 3, 2021	November 28, 2021	No
August 9, 2020	October 4, 2020	November 29, 2020	No
July 14, 2019	September 8, 2019	November 3, 2019	yes

[21] He has only one claim within an eight-week window.

[22] This means that the Claimant doesn't meet the last condition. And because he doesn't meet all the conditions, he isn't entitled to the five extra weeks available to some seasonal workers.

– **Why he doesn't meet the last condition**

[23] The Claimant says that his entitlement to the extra five weeks should be based on his occupation, not when his claims start.⁴ He says that circumstances beyond his control meant he couldn't meet the last condition. He points out that:

- He applied for EI regular benefits, not CERB.
- If the Commission had started his claim in September 2020 when he applied, rather than extend CERB for another four weeks, his 2020 claim would have been within the eight-week window.
- In 2020 all EI claims were extended by a few weeks, which caused his 2021 claim to be weeks later.
- The unearned and unasked for weeks of emergency benefits shouldn't affect his entitlement to the additional five weeks for seasonal workers.
- The intention of the law is to help people. The government's actions were out of his control, and they are penalizing him.

[24] I understand the Claimant's arguments and I appreciate that he is frustrated with the situation.

[25] But the law is clear that the extra five weeks of EI benefits aren't available to all seasonal workers. Only seasonal workers who meet the conditions set out in the law get the extra weeks. Neither the Tribunal nor the Commission has the power or discretion to look at the reasons why a claimant doesn't meet those conditions.

⁴ His reasoning is on page GD2-5.

[26] While I sympathize with his situation, I can't change the law. The Claimant doesn't meet those conditions, so he can't get the extra five weeks.

Conclusion

[27] The Claimant doesn't meet the conditions to get the five extra weeks available to some seasonal workers.

[28] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section