



Citation: *GS v Canada Employment Insurance Commission*, 2023 SST 1899

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: G. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (576866) dated April 5, 2023 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: In person

Hearing date: September 13, 2023

Hearing participant: Appellant

Decision date: November 2, 2023

File number: GE-23-1315

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.¹

[2] The Appellant does not have enough earnings from fishing to establish a summer employment insurance (EI) fishing claim beginning on December 18, 2022.

Overview

[3] The Appellant is a fisher. He fished with a partner who owned the boat and gear they both fished with. In 2019 his partner in fishing put his boat and gear up for sale. The Appellant would have the first opportunity to decide if he would partner with the new owner of the boat and gear.

[4] The Appellant's partner sold the boat and gear two days before the start of the 2021 fishing season. The Appellant did not go fishing with the new owner and could not find work fishing.

[5] The Appellant obtained non-fishing work elsewhere in 2021. He qualified for and received regular EI benefits under temporary measures that were in place at the time he applied for EI benefits.² The Appellant returned to fishing in 2022 and fished during the benefit period established for his regular EI benefits. He applied for and received EI winter fishing benefits from July 10 to December 17, 2022.

[6] The Appellant then applied for EI summer fishing benefits to begin December 18, 2022. The Commission says he does not have enough income from fishing in his qualifying period to receive EI summer fishing benefits. It says this is because the qualifying period for that claim began after his regular EI benefit period ended and all of his fishing income was earned before that date.

¹ The *Employment Insurance Act* (EI Act) calls a person who applies for EI benefits a "claimant." A person who appeals a decision of the Commission to the Tribunal is called an "Appellant."

² The temporary measures in effect from September 2020 to September 2021 deemed a person who had 120 hours of insurable employment to have an additional 300 hours of insurable employment. A person who had 420 hours of insurable employment qualified to receive 50 weeks of regular EI benefits at a weekly rate of \$500. See section 153.17 of the EI Act. I am paraphrasing the law for this decision.

[7] The Appellant disagrees. He says he had two periods of fishing with two employers for which he was issued separate Records of Employment as a Self-Employed Fisher. He has regularly established two fishing claims each year. He should be able to stop his regular EI benefit period once he applied for EI winter fishing benefits so he can start an EI summer fishing claim when his winter EI fishing benefits ended.

Issue

[8] Can the Appellant establish an EI summer fishing claim as of December 18, 2022?

Analysis

[9] The Appellant wants to start an EI summer fishing claim and receive those benefits as of December 18, 2022.

[10] To do this, the Appellant has to prove two things:

- He does not qualify for EI regular benefits, and
- He has at least \$2,500 of fishing earnings in the qualifying period.

Does not qualify for EI regular benefits

[11] The Appellant meets this first condition. There is no evidence in the appeal file that he qualified for EI regular benefits as of December 18, 2022.³

\$2,500 of fishing earnings in the qualifying period

[12] The Appellant does not meet this second condition.

³ To qualify for EI regular benefits the Appellant would have to earn a minimum number of insurable hours. See section 7 of the EI Act.

– **What happened**

[13] The Appellant's benefit period while he was receiving EI regular benefits started on July 11, 2021 and ended on Saturday, July 9, 2022.

[14] He fished with two employers in May 2022. The first period with employer #1 was May 23, 2022 to May 25, 2022 and he earned \$5,398.25. The second period with employer #2 was on May 28, 2022 when he earned \$11,314.46.

[15] The Appellant applied for EI winter fishing benefits to start on May 29, 2022. This application was made on June 6, 2022.

[16] The Commission accepted the application. But, because the benefit period for the Appellant's EI regular benefits did not expire until July 9, 2022, it continued that benefit period and started his EI winter fishing benefits on July 10, 2022. He was paid EI winter fishing benefits until December 17, 2022.

[17] The Appellant next applied for EI summer fishing benefits to start on December 18, 2022. For this claim he used earnings from fishing the same two employers. He fished with employer # 1 from May 30 to June 6, 2022 and again from June 6 to June 11, 2022 earning a total of \$4,938.24. He fished with employer #2 from June 12 to June 17, 2022 earning \$11,121.23.

– **Why the Appellant needs \$2,500 in earnings from fishing**

[18] The unemployment rate for the EI economic region where the Appellant lived when he applied for summer fishing benefits was 15%. The law says in a region with an unemployment rate of more than 15%, a fisher needs to earn \$2,500 of fishing earnings during the qualifying period to establish an EI fishing benefit claim.⁴

– **The Appellant's qualifying period**

[19] The crux of this appeal comes down to when the Appellant's qualifying period for his EI summer fishing claim starts.

⁴ See Schedule [1] – Insurable Earnings Entrance Requirement for Fishers.

[20] The Appellant says it should start May 29, 2022. The Commission says it should start on July 10, 2022. If the Appellant's date is right, he has enough fishing earnings during his qualifying period to get summer fishing benefits. If the Commission's date is right, the Appellant doesn't have any fishing earnings in his qualifying period, and he can't get summer fishing benefits.

[21] The law says the qualifying period for an EI summer fishing claim can start on different dates depending on the claimant's circumstances.⁵ It starts on the later of the:

- (a) Sunday of the week in which March 1 falls (March 1, 2022)
- (b) Sunday of the first week of the last benefit period, or (July 10, 2022)
- (c) Sunday that falls 31 weeks prior to applying for fishing benefits (May 15, 2022)

[22] The dates in brackets are the applicable dates for each of the possible start dates of the Appellant's qualifying period. Based on these three dates, I find by law the Appellant's qualifying period must start on July 10, 2022, the later of the three possible dates. My finding is based on the following reasons.

[23] The Sunday of the first week of the Appellant's last benefit period is July 10, 2022.⁶ This is because the benefit period for his regular EI benefit period established on July 11, 2021 did not end until July 9, 2022.⁷ The Appellant wanted to start his winter fishing claim on May 29, 2022, but the law doesn't allow him to do that. The winter fishing claim couldn't start until July 10, 2022, the day after his EI regular benefit period ended. The law didn't allow the Appellant to cancel or end this benefit period before July 9, 2022.⁸ This means that the Sunday of the first week of his last benefit period, was July 10, 2022. This is the later of the three dates and, as a result, I find it is the start date of his qualifying period for his EI summer fishing claim.

⁵ See section 8(4) of the Fishing Regulations. I have paraphrased the law for this decision.

⁶ The last benefit period was the EI winter fishing benefits begun on July 10, 2022.

⁷ Section 10(2) of the EI Act says a benefit period is 52 weeks.

⁸ I discuss these options below.

– **The Appellant doesn't have any earnings in his qualifying period that started on July 10, 2022**

[24] The Appellant's earnings from fishing, although from two separate enterprises in two separate periods, were earned from May 23 to May 28, 2022 and from May 30 to June 17, 2022. He testified he did not fish after June 17, 2022. This means the Appellant did not have any earnings from fishing in the qualifying period that began on July 10, 2022. As a result, I find he could not establish an EI summer fishing claim on December 18, 2022.

– **I considered all the Appellant's arguments**

[25] The Appellant submitted he was told by Service Canada officers he could apply for and establish both an EI winter fishing claim in July 2022 and an EI summer fishing claim in December 2022. He argued that had his EI regular benefit period ended when he returned to fishing in May 2022 or when he applied in June 2022, he would have had enough earnings from the two periods of fishing in May 2022 and June 2022 to qualify for an EI winter and an EI summer fishing claim.

[26] The Appellant also argued the EI regular benefits he received from the claim starting in July 2021 were a temporary measure. As a temporary measure, those benefits should have ended when he returned to fishing in May 2022.

[27] I note the law allows for a claimant who is receiving EI regular benefits to cancel a benefit period in favour of starting a new one when certain conditions are met.⁹ But those conditions are very specific and do not include canceling a regular EI benefit period in favour of starting a fishing benefits claim.

[28] With respect to cancelling a regular EI benefits claim in favour of establishing a fishing benefits claim, case law says a proper interpretation of the EI Act is that a fisher

⁹ See section 10(6) of the EI Act.

is not qualified to receive benefits as a fisher as long as that fisher is entitled to benefits from regular insurable earnings.¹⁰

[29] I note the temporary measures did not make any changes to the law concerning the cancelling of a benefit period or to the law setting out the two conditions to qualify for fishing benefits.

[30] In my view, as the law is written the Commission correctly determined the Appellant was entitled to regular EI benefits until July 9, 2022 when he applied for a winter fishing claim in June 2022. This had the effect of starting his winter fishing claim on July 10, 2022. Which in turn had the effect of starting the qualifying period for his summer fishing claim on July 10, 2022.

[31] I recognize this is not the outcome the Appellant wanted from his appeal. I also recognize that not receiving EI fishing benefits from December 18, 2022 has had a significant financial impact on the Appellant. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹¹ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

Conclusion

[32] The appeal is dismissed.

[33] The qualifying period for the Appellant's EI summer fishing claim began on July 10, 2022. He did not have any earnings from fishing after that date. As a result, he cannot establish an EI summer fishing claim as of December 18, 2022

Raelene R. Thomas
Member, General Division – Employment Insurance Section

¹⁰ See *Canada Umpire Benefits (CUB) 51644*. CUB decisions are the decisions of an Umpire, which was the final level of appeal in the former Unemployment Insurance administrative appeal system. Although I am not bound by CUBs, I am persuaded by the finding in CUB 51644 because the circumstances of that decision are the same as those of the Appellant.

¹¹ *Canada (Attorney General) v. Kneé*, 2011 FCA 301. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal.