



Citation: *DC v Canada Employment Insurance Commission*, 2024 SST 391

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:

D. C.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (650124) dated February 28, 2024
(issued by Service Canada)

Tribunal member:

Angela Ryan Bourgeois

Type of hearing:

IN WRITING

Decision date:

April 19, 2024

File number:

GE-24-987

Decision

[1] I am dismissing the Appellant's appeal, but I am also changing the allocation amounts. The Canada Employment Insurance Commission (Commission) allocated the Appellant's fishing earnings to the correct weeks, but the amount allocated to each week is incorrect.

Overview

[2] This appeal is about how the Commission allocated the Appellant's earnings from fishing.

[3] The Appellant is a fisher. He earned \$12,547.99 during a fishing trip from May 21, 2022, to May 27, 2022.

[4] The *Employment Insurance Fishing Regulations* (Fishing Regulations) say that earnings from a catch consisting of fish other than cured fish must be allocated equally to each day of the fishing trip.¹

[5] The Commission decided to allocate the Appellant's earnings over a two-week period. It allocated \$2,510 to the week of May 15, 2022, and \$10,038 to the week of May 22, 2022.²

[6] The onus is on the Appellant to prove that the Commission's allocation is incorrect.³

[7] The Appellant disagrees with the Commission's allocation. The Appellant says that he didn't have any earnings the week beginning May 15, 2022. He says he received one cheque for the week ending May 28, 2022, so all his earnings should be allocated to that week.

¹ See section 10(3)(a) of the *Employment Insurance Fishing Regulations* (Fishing Regulations).

² See decision letters on page GD3-25 and GD3-40.

³ The Appellant must prove this on a balance of probabilities. In other words, he must prove that it is more likely than not that the allocation is incorrect.

Issue

[8] Did the Commission allocate the Appellant's earnings to the correct weeks in the right amounts?

Analysis

[9] The Appellant earned \$12,547.99 during a fishing trip he went on in May 2022. There is no dispute these are fishing earnings under the Fishing Regulations.⁴ So, under the Fishing Regulations, these earnings must be allocated.⁵

[10] The Fishing Regulations say that fishing earnings from a catch consisting of fish other than cured fish must be allocated equally to each day of the fishing trip.⁶

[11] I accept that the Appellant's earnings relate to a catch other than cured fish because I see no evidence in the file that the catch consisted of cured fish.

[12] I find that the Appellant's fishing trip started on May 21, 2022, and ended on May 27, 2022. This is what the record of employment shows, and the employer confirmed the dates with the Commission.⁷

[13] So, by law, one-seventh of the earnings must be allocated to each day of the seven-day trip.

[14] The Appellant earned \$12,547.99 but the total earnings to be allocated is \$12,548 because earnings are rounded to the nearest dollar.⁸

[15] The *Employment Insurance Act* (EI Act) says that a "week" is a period of seven consecutive days beginning on and including Sunday.⁹

⁴ See section 5(2) and 5(3) of the Fishing Regulations.

⁵ See section 10 of the Fishing Regulations.

⁶ See section 10(3)(a) of the Fishing Regulations.

⁷ See pages GD3-16, GD3-19 and GD3-38.

⁸ See section 6(2) of the *Employment Insurance Act* (EI Act).

⁹ See section 2 of the EI Act.

[16] Since the Appellant's fishing trip started on Saturday, May 21, 2022, and lasted for seven days, his earnings span two weeks.

[17] So, I find that the Appellant's earnings are allocated as follows:

Week of	Day of Fishing Trip	Amount allocated
Sunday, May 15, 2022, to Saturday, May 21, 2022	May 21, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 22, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 23, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 24, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 25, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 26, 2022	\$1,793
Sunday, May 22, 2022, to Saturday, May 28, 2022	May 27, 2022	\$1,790 ¹⁰
Total amount allocated		\$12,548

[18] The total amount allocated to the **week of May 15, 2022**, is **\$1,793**, and the total amount allocated to the **week of May 22, 2022**, is **\$10,755**.

[19] The Appellant says that all his earnings should be allocated to the week of May 22, 2022, because his paystub shows that his earnings were for the week ending May 28, 2022.¹¹ The week ending on May 28, 2022, is the week of May 22, 2022.

¹⁰ The earnings are not evenly divisible by seven. So, to avoid increasing the amount allocated due to rounding, the earnings allocated to this day are slightly less than the earnings allocated to the other days.

¹¹ See page GD2-4. See pay stub on page GD2-7.

[20] But allocating his earnings that way ignores the clear instructions in the Fishing Regulations. Further, it doesn't take into account that the fishing trip started on Saturday, May 21, 2022, and although the fishing trip only lasted seven days, those seven days are in two different EI weeks.

[21] The Appellant says he only received one cheque. How many cheques he received isn't relevant to when the earnings are allocated.

[22] The Commission allocated \$2,510 to the week of May 15, 2022, and \$10,038 to the week of May 22, 2022. It based its allocation on the Appellant's earnings per week as reported by the employer.¹² This allocation isn't correct because it ignores the allocation method set out in the Fishing Regulations.

[23] The Commission suggested that I consider how many days he worked during the fishing trip. Doing this would be a mistake because the allocation isn't based on how many days he worked, it is based on the date and duration of the fishing trip.

– **Overpayment**

[24] According to the Commission's Overpayment Breakdown, despite my changes to the amounts allocated to the week of May 15, 2022, and May 22, 2022, benefits are still not payable to the Appellant for these weeks.¹³ The Appellant has been overpaid benefits because the Commission paid him benefits for those two weeks. The Appellant must repay the overpayment.¹⁴

¹² See page GD3-19.

¹³ See page GD3-29 which shows that no benefits are payable with earnings in these amounts.

¹⁴ The overpayment breakdown includes earnings for the week of May 29, 2022. These earnings are not part of this appeal. Sections 43 and 44 of the EI Act say that overpaid benefits must be repaid.

Conclusion

[25] The Appellant received \$12,548 in fishing earnings. These earnings are allocated as set out in paragraphs 17 and 18 above.

[26] This means that the appeal is dismissed with modification.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section