Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *D.C. v. Canada Employment Insurance Commission*, 2018 SST 977

Tribunal File Number: AD-18-349

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: October 4, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

[2] The Respondent, the Employment Insurance Commission (Respondent) is directed to antedate the claim for benefits of the Appellant, D. C. (Claimant) to April 7, 2016.

OVERVIEW

[3] The Claimant was dismissed by his employer on or about February 25, 2016, after he was injured at work. The Claimant did not apply for Employment Insurance benefits until July 2017 because he had been waiting for outstanding worker's compensation benefits (WCB) and for a resolution to a Human Rights (HR) complaint that he had hoped would require his employer to reinstate him. He claimed that representatives of the Commission at a Service Canada office had advised him to defer filing his application while he pursued his WCB and HR claims and that he had periodically updated the Commission as to the progress of those claims. By the time the Claimant finally applied for Employment Insurance benefits, he no longer had the required number of hours of insurable employment in his qualifying period. His request to have his application antedated to February 24, 2016, was denied on the basis that he did not have good cause for the delay. The Claimant requested a reconsideration but the Commission maintained its original decision. The General Division of the Social Security Tribunal dismissed his appeal, and the Claimant now appeals to the Appeal Division.

[4] The appeal is allowed. The General Division misunderstood the Claimant's evidence to find that the Claimant misunderstood the advice he received from Service Canada, and this impacted the General Division's decision. I have given the decision that the General Division should have given and allowed the antedating to April 7, 2016.

ISSUES

[5] Was the General Division's finding that the Claimant misunderstood what he was told by the Commission made in a perverse or capricious manner or without regard to the Claimant's evidence that:

a. the Claimant was repeatedly assured that he could defer his application and not advised to the contrary; or
b. the Claimant did not assert that Service Canada told him that his "claim" was progressing?

ANALYSIS

Standard of Review

[6] The grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) are similar to the usual grounds for judicial review in the Courts, suggesting that the same kind of standards of review analysis might also be applicable at the Appeal Division.

[7] However, I do not consider the application of standards of review to be necessary or helpful. Administrative appeals of Employment Insurance decisions are governed by the DESD Act. The DESD Act does not provide that a review should be conducted in accordance with the standards of review. In *Canada (Citizenship and Immigration) v. Huruglica*,[1] the Federal Court of Appeal was of the view that standards of review should be applied only if the enabling statute provides for their application. It stated that the principles that guided the role of courts on judicial review of administrative decisions have no application in a multilevel administrative framework.

[8] *Canada (Attorney General) v. Jean*[2] concerned a judicial review of a decision of the Appeal Division. The Federal Court of Appeal was not required to rule on the applicability of standards of review, but it acknowledged in its reasons that administrative appeal tribunals do not have the review and superintending powers that are exercised by the Federal Court and the Federal Court of Appeal where the standards of review are applied. The Court also observed that the Appeal Division has as much expertise as the General Division and is therefore not required to show deference.

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[1] *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93
[2] *Canada (Attorney General) v. Jean*, 2015 FCA 242

[9] While certain other Federal Court of Appeal decisions appear to approve of the application of the standards of review,[3] I am nonetheless persuaded by the reasoning of the Court in *Huruglica* and *Jean*. I will therefore consider this appeal by referring to the grounds of appeal set out in the DESD Act only.

General Principles

[10] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[11] However, the Appeal Division may only intervene in a decision of the General Division, if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s. 58(1) of the DESD Act.

[12] The only grounds of appeal are described below:

a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
b. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
c. The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material.

Introduction to the issues in this appeal

[13] Subsection 10(4) of the *Employment Insurance Act* (EI Act) permits a claimant to antedate his or her initial claim for benefits "if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made."

[3] See for example *Hurtubise v. Canada (Attorney General)*, 2016 FCA 147; *Thibodeau v. Canada (Attorney General*), 2015 FCA 167

[14] The General Division found that the Claimant did not have good cause for the delay because he did not establish that he did what a "reasonable and prudent" person in his situation would have done throughout the entire period of his delay, and because he did not submit any exceptional circumstances to justify the delay.

[15] To reach this finding, the General Division discounted much of the Claimant's testimony as to what manner of advice and assistance he received and determined instead that the Claimant misunderstood what he was told. It found that his evidence was inconsistent, implied that it was implausible, and questioned its reliability.

Issue 1: The General Division's consideration of the Claimant's evidence that he was repeatedly assured that he could defer his application, and that he was not advised to the contrary.

[16] The General Division stated that the Claimant rested his claim on his argument that he had been told not to apply for benefits until he dealt with his HR complaint and "[a]lternatively—as [the Claimant] stated at the hearing—[the Claimant] argued that they failed to tell him he should apply before his complaint was settled"[4]. The General Division also stated that the Claimant was "inconsistent as to which of these two scenarios applied."[5]

[17] I have reviewed the audio record of the General Division hearing. The Claimant testified that, in his several discussions with Commission agents at Service Canada over the course of time, "at no time" was he told to apply right away (00:38:55).[6] However, the Claimant also rejected unequivocally the General Division member's suggestion that he had not been told to not apply, stating "I was told not to apply because I couldn't get workman's compensation and Employment Insurance benefits at the same time"(00:17:50). He also said that he was told *not* to apply until what he called his workmen's compensation was "dealt with" (00:18:40), and later, that he had been told not to apply until his workman's compensation was "settled" (00:22:30). He also said "They told me it was fine to just wait, so that's what I did, like, I was just doing what I was told by Service Canada employees" (00:31:23).

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[4] General Division decision, para. 31
[5] Ibid.
[6] See also 00:17:25

[18] Taking the Claimant's testimony as a whole, it is apparent that the Claimant's testimony was entirely coherent and consistent (regardless of the fact that his estimates of when and how often he visited Service Canada were imprecise). All of his statements and his testimony agree as follows:

a) He was misinformed by representatives of the Commission that he could defer his application while he awaited developments in his WCB claim;

b) In accordance with that misinformation, he did not apply immediately;

c) The Claimant periodically updated the Commission on developments in the status of his WCB claim and HR complaints;

d) He was never told on the occasion of any of those updates (until his final visit) that he should be filing his application for benefits.

[19] The General Division's statement that he was inconsistent as to which scenario applied or that his statements were in the "alternative" suggests that his testimony should be reducible to "I was told not to apply or, at least, I wasn't told I should apply." However, his testimony does not bear out such an interpretation. The gist of his testimony was rather: "I was never told I should apply right away and, in fact, I was told to wait until my WCB issues were settled."

[20] In my view, the General Division mischaracterized the Claimant's evidence as "inconsistent" and proceeded without apparent regard for that evidence. It was on that basis, that the General Division found that it was unlikely that various agents at Service Canada would have failed to instruct the Claimant to file without delay, and concluded that the Claimant must have misunderstood what he was told or not told by Service Canada agents.

[21] In further support of its conclusion that the Claimant had misunderstood what he was told (i.e. that his evidence could not be relied on), the General Division theorized that the Claimant's concern about possibly having to repay benefits "appears to have coloured his approach to applying for benefits" or that it "may have affected his enquiries and how he interpreted the answers he received." There was no evidence of any of this.

[22] The Claimant did testify as to a prior occasion when he was late to apply for Employment Insurance benefits and that he had been able to obtain an antedate and obtain benefits without difficulty. He also said that he had been involved in a wrongful dismissal suit on that earlier

occasion and, when the suit was resolved, his ability to obtain the settlement funds was delayed by his Employment Insurance benefits. Furthermore, he was required to repay his Employment Insurance benefits.

[23] However, the Claimant also testified, in respect of this claim, that he specifically raised his concerns with a Service Canada agent, including that he would have to repay the benefits he received if he was successful in his other claims. He testified that the Service Canada's response was as follows:

> "What I was told is there wouldn't be a problem filing late. I would just fill … I would have a reaso… like, because I had this [other] claim it would be reasonable and they would just backdate it for me when my issue was complete." (00:27:05)

[24] It is possible that what the Claimant has reported he heard is the exact opposite of what he was actually told because, as postulated by the General Division, he could have interpreted the Service Canada agent's advice in light of his previous experience. However, it is equally possible that his experience sensitized him to the issue (such that he addressed it up front with the agent - as he testified) and that he would have then listened carefully to the response to his specific concern in order to avoid missteps. The General Division's speculation as to how or why the Claimant may have misunderstood what he was told at Service Canada is not a valid reason for finding that the Claimant did, in fact, misunderstand.

[25] I find that the General Division misinterpreted the Claimant's evidence as being inconsistent, that this impacted its determination that the Claimant's evidence was unreliable, and that this was used to support the finding that the Claimant "misunderstood" what Service Canada agents told him.

Issue 2: The General Division's understanding of the Claimant's evidence regarding the progress of his claim.

[26] The General Division's finding that the Claimant asserted that he was "always told his claim was progressing" is another factor that likely contributed to the General Division's conclusion that the Claimant simply misunderstood whatever he was told at Service Canada.

[27] The General Division might justifiably have found it to be incredible that a Service Canada agent—or even more than one agent—would repeatedly confirm such a basic fact, when a cursory search would have revealed that the Claimant had not yet filed a claim. The Claimant's claim could not have been progressing and could not show up on any system as progressing before the Claimant even filed a claim.

[28] However, the Claimant did not claim that agents of the Commission ever told him that his Employment Insurance benefit claim was progressing. His representative stated in a letter that the Claimant's HR claim was progressing (GD3-36). The representative also said that he was advised that *he* was "progressing" correctly, presumably by waiting for the other processes, such as the Human Rights Commission process, to conclude (GD3-37). In a conversation between the representative and the Commission (GD3-39), it is recorded that "[the Claimant] kept the Service Canada staff up to date on his information and was always told by them that he was progressing correctly."

[29] In oral submissions on this appeal, the Commission accepted that the Claimant had not, at any point, suggested that any Commission agent had told him that his Employment Insurance claim was progressing. The Commission now submits that the General Division misinterpreted this evidence. The Commission further submitted that this probably impacted the appeal result and that the decision would likely have been different if this error had not been made. The Commission stated that its present position is that the Claimant acted as a reasonable person in delaying his application.

[30] In my view, the finding that the Claimant misunderstood the advice that he had received from the Commission is based in part on the General Division's misapprehension that the Claimant's evidence was that he believed the Commission assured him his claim had already been filed. This likely contributed to its assessment of the Claimant's evidence as unreliable.

[31] In summary, I find that the General Division's conclusion that the Clamant did not have good cause for the delay is based on an erroneous finding that the Claimant misunderstood what he was told at Service Canada. This erroneous finding was a result of the General Division's misapprehension of the evidence in two respects. The first of those is the General Division's misapprehension that the Claimant's testimony was inconsistent as to whether he was simply not

given information by Service Canada agents that he should file his application or whether he was actually misinformed by the Commission and told that he should wait to apply. The second misapprehension was the General Division member's understanding that Service Canada agents told the Claimant that his claim was progressing at a time when it had not even been filed.

[32] Therefore, the General Division erred under s. 58(1)(*c*)of the DESD Act by basing its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

CONCLUSION

[33] The appeal is allowed.

REMEDY

[34] Under s. 59 of the DESD Act, I have the authority to give the decision that the General Division should have given; to refer the matter back to the General Division for reconsideration; or to confirm, rescind, or vary the General Division decision in whole or in part.

[35] The Commission has recommended that I give the decision that the General Division should have given, suggesting that the General Division should have found that the Claimant had good cause for his delay. I accept that the record is complete and that it is appropriate for me to give the decision that the General Division should have given.

[36] Subsection 10(4) of the EI Act allows for the antedating of a claim where a claimant can show that he was qualified for benefits on an earlier day than the date of the application and that the claimant had good cause for the delay. As noted by the General Division, the test for "good cause" is whether the Claimant can show that he did what a reasonable person in his situation would have done to satisfy himself of his rights and obligations under the EI Act.[7] Claimants have an obligation to enquire about their rights and obligations and the steps that they must take to protect their benefits.[8]

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[7] *Canada (Attorney General) v. Albrecht*, A-172-85
[8] *Canada (Attorney General) v. Dickson*, 2012 FCA 8

[37] The steps the Claimant took to satisfy himself as to his obligations are not documented, because they involved a series of in-person conversations between himself and Service Canada agents in the period between April 2016 and July 2017, before he filed his claim. Thus, the only available evidence of the existence and substance of these consultations/conversations are the Claimant's statements and testimony.

[38] The General Division accepted that the Claimant may not have received sufficiently clear instructions from Service Canada agents to prompt him to file a claim, but it made no finding as to how many such visits occurred or when they occurred. The General Division gave weight to discrepancies, inconsistencies, and a "lack of precision" for the purpose of finding that this diminished the overall reliability of the Claimant's evidence. I have a different view.

[39] I have already found that the General Division was in error in considering the Claimant to have presented alternative, inconsistent versions of the nature of the assistance he obtained from Service Canada. In terms of the discrepancies regarding the date of the Claimant's first visit to the General Division,[9] I do not find them to be significant.

[40] I do not read GD3-22 as confirmation that the Claimant claimed that his first enquiry was after he *filed* an HR complaint in May, which would be inconsistent with statements that he first visited Service Canada in April. The Claimant stated that his pending HR complaint is the reason for his delay, but this was recorded in the present tense in a statement provided in August 2017. He did not say that he had filed an HR complaint before his first visit to Service Canada.

[41] It is clear from other evidence, including his testimony, that he originally delayed his application because he was trying to claim WCB as well (see audio record at 00:17:50). Furthermore, he testified that after his termination, that he "started" with a lawyer who referred him to the Ministry of Labour, from which he was referred to Human Rights. The Claimant testified that he was still only consulting with a lawyer at the time he first went to Service Canada (00:28:52), which would mean his first visit to Service Canada would have had to occur before he filed the HR complaint.

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[9] General Division decision, para. 38

[42] I also note that there is no contradiction between his estimate that he first visited Service Canada four to six weeks after his termination and his claim that his first visit was in April (GD3-37 and GD3-44). Six weeks from his termination on February 24 would be April 6.

[43] As for the Claimant's testimony that his first visit was a "couple of weeks" after his termination, the General Division was correct that the Claimant originally testified that he first attended Service Canada within "a couple weeks" of his dismissal. However, when the General Division member returned to this testimony several minutes later in the hearing, the Claimant immediately volunteered—without any challenge—a clarification in which he equates his description of the "couple of weeks" initial delay to a delay of four to six weeks (00:19:46). Although, "couple of weeks" might not commonly be applied to a period as long as four to six weeks, it is almost never intended as a precise measure. It appears from the audio record that the Claimant employs the term particularly loosely, but it also appears that his more considered evidence was that the original delay was actually four to six months. I can draw no adverse inference from the Claimant's self-correction.

[44] I note that the General Division was concerned with the Claimant's inexact estimates of the intervals between his Service Canada visits as well.[10] The Claimant's testimony was clear to the extent that he knew he returned to Service Canada periodically when there were postponements or developments in his pursuit of his WCB claim or his HR complaint (00:19:26). One would not normally expect such events to occur with perfect regularity, so it is not surprising that the Claimant's original description that they occurred every "two months" would have to be "approximately" two months, as he later qualified (00:22:00). The General Division member commented in the hearing that it was more like four months, but the most recent two intervals, according to the Claimant's representative's letter (GD3-37), were in fact two months (from May to July and from March to May). Prior to that, the intervals were four months, three months, and four months. The fact that the Claimant did not calculate and testify as to the correct average interval causes me no concern in relation to the reliability of the Claimant's evidence, nor am I disturbed by the fact that GD3-37 records six visits to Service Canada, even though the Claimant also suggested to the Tribunal that it was seven.

[10] General Division decision, para. 39

[45] At the end of the day, I am left with some uncertainty as to whether the Claimant first visited Service Canada four, five, or six weeks after his dismissal, and some uncertainty as to whether he visited Service Canada six or seven times. However, despite this slightly blurred timeline, I am satisfied that the Claimant visited Service Canada in person within six weeks of his termination and at least five more times at intervals of two to four months over the next 16 months.

[46] The Claimant testified that he had had a similar experience where he was pursuing a claim parallel to his Employment Insurance claim, deferred his application, and obtained an antedate without any problems. I do not accept this to mean that he was interpreting everything Service Canada told him in the present case with an expectation of a virtually automatic antedate. I note that the Claimant also testified that he specifically asked about the effect of an application for benefits on his other claims because of this prior experience and that he was assured he did not need to apply immediately because his circumstances were such that he could get an antedate.

[47] Perhaps it is unusual for a Service Canada agent to offer such advice, but I do not find it to be so implausible as to overwhelm the Claimant's testimony that it did actually occur in this case. Furthermore, the General Division's finding that it is unlikely that four separate agents on six separate occasions would all be completely ignorant that claimants must apply for benefits right away, unhelpfully assumes that the circumstances of each visit would be identical.

[48] It is unlikely that the Claimant laid out all his circumstances in exactly the same way and in the same detail to each agent on each subsequent visit, and it would not necessarily be apparent to each agent to whom the Claimant spoke (when the Claimant returned to update Service Canada), how much time had elapsed since the Claimant was terminated and that he had still not filed his application.

[49] The General Division was of the view that there were multiple agents that provided the "identical, incorrect" information[11] but there was no evidence that the Claimant received the same advice from multiple agents. The Claimant's testimony was that he received the same advice more than once from an agent he identified as "Robert." The Claimant also said he spoke

[11] General Division decision, para. 44

with multiple Service Canada agents to update them as to the status of his other claims and that they did not advise him to apply immediately, but the Claimant did not say that each person to whom he spoke, on each occasion, repeated the advice that he could defer his application.

[50] Service Canada agents are not specialists in Employment Insurance and they provide advice and assistance for a number of government programs and services. I do not think it is implausible that an agent may have been confused as to the criteria for antedate, or what constitutes good reason, or that the same agent who initially believed that there was no urgency to the application because of the availability of the antedate process would, on a subsequent occasion, reinforce his or her original advice.

[51] The Claimant testified that he visited Service Canada in person on each occasion and had conversations with Service Canada agents, often after waiting one to two hours. He said that he asked about his specific circumstances originally, and he was specifically advised to hold off on his application for benefits. He also testified that he kept the Commission, through Service Canada, abreast of any developments in his circumstances that might affect the timing of his application. According to the Claimant, at no time was he ever told that the advice that he had been given to hold off on his application was wrong: When he was finally told that "it would not hurt to file [his] application"(GD3-22), he did so. He testified that he would have applied earlier if anyone ever told him that he should.

[52] In his submissions to the Appeal Division, the Claimant again insisted that he did not misunderstand what he was told, arguing that he is well-educated, with many years of experience in the banking industry.

[53] I accept the reliability of the Claimant's evidence as to the nature of the advice and assistance he received in his several visits to Service Canada. The original General Division hearing proceeded by way of teleconference and I have reviewed the audio record in full. I find the Claimant's testimony to be coherent, consistent, and credible.

[54] There is no evidence to contradict the Claimant's account of his dealings with Service Canada or evidence on which I might find him to have misunderstood what he was told at Service Canada. I accept that a Service Canada agent (or agents) told the Claimant—more than

once—that he should defer his application. I also accept that on at least one occasion, he was specifically told he would be able to get an antedate later in his circumstances. I find that he was not told of the importance of a timely application or that he should immediately file his application in any of his visits to Service Canada, except for his final visit in July 2017.

[55] I consider that the Claimant properly enquired about his obligations, that he relied and acted on the recommendation of an agent or agents of the Commission, and that he was diligent to maintain contact with the Commission to keep it up to date with changes in his circumstances that might change the Commission's advice or recommendations. The Federal Court of Appeal in *Canada (Attorney General) v. Pirotte*,[12] made the following comments about a mistake induced by representations on behalf of the Commission: "Such a case might be regarded as good cause for delay because it would be a cause imputable to the Commission rather than to the claimant." Although these comments were not necessary to the decision in *Pirotte* and are not binding on me, I consider them to be persuasive.

[56] In my view, the Claimant acted as a reasonable person would act in his circumstances to satisfy himself as to his rights and obligations from the point that he first consulted with an agent at Service Canada. I find that the Claimant had "good cause" for the entire period from the date of his first visit to Service Canada until he applied for benefits on July 21, 2017.

[57] Having said that, I note that the Claimant did not initially consult the Commission in a timely manner following his termination. His only justification for this delay is that he anticipated being able to access other benefits and he believed he could survive on his own resources in the interim. In *Howard v. Canada (Attorney General)*,[13] the Federal Court of Appeal considered a case where an appellant had delayed his application for benefits because he did not want to go to the government with his hand out and was able to live on his savings and severance. The Court did not consider this to be good cause for the delay. Likewise, I do not accept that the Claimant had good cause for the delay in the time before his initial visit to Service Canada.

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[12] *Canada (Attorney General) v. Pirotte A-108-76*
[13] *Howard v. Canada (Attorney General)*, 2011 FCA 116

[58] Subsection 10(4) of the EI Act states that a claim "shall be regarded as having been made on an earlier day [than the day is it is actually made]" if "the claimant can show that the claimant was qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made."

[59] The Claimant applied for an antedate to February 24, 2016. If February 24, 2016, is taken as the "earlier day" from s. 10(4), then the Claimant would have to show that he had good cause from February 24, 2016, to July 21, 2017. However, s. 10(4) does not require that the "earlier day" be the date of the Claimant's request or the date of the interruption of earnings. The only other requirement of s. 10(4) is that the Claimant be qualified to receive benefits, so the "earlier day" according to s. 10(4) may be any day from the date of the interruption of earnings all the way to the last day on which the Claimant would still qualify (i.e. on which he would still have sufficient hours of insurable employment in the qualifying period preceding the antedate of the claim).

[60] On the face of the decision denying the antedate, the Commission appears to have only considered the antedate to February 21, 2016, which is *not* the date the Claimant originally requested, but rather the first date that he might have qualified for benefits (the Sunday of the week of his interruption of earnings per s. 10(1)(*a*) of the EI Act).

[61] However, in my view, the Commission must be presumed to have considered the Claimant's eligibility for an antedate to any date from the first date that he could have made an initial claim for benefits (February 21, 2016) through to the last day he could have been qualified to receive benefits. If it were otherwise, claimants would either have to gamble that they could accurately anticipate how their reasons for delay would be received by the Commission and attempt to tailor their requests accordingly, or they would have to apply for the latest date on which an antedate might be granted (and potentially limit the number of weeks of benefits to which they might be entitled). Alternatively, the Commission would have to entertain and determine repeat requests for antedates to dates that are different from that of the original denied request. I do not see how any of these alternate interpretations serve the interests of justice.

[62] I have found that the Claimant had "good cause" for the entire period from the point of his first visit to Service Canada until the date of his application on July 21, 2017, but I have not yet determined the date of his first visit.

[63] At the General Division hearing, the Claimant appeared to adopt the evidence put forward in a written statement by his former representative (00:20:50) in preference to his own estimates. In the written statement, his representative had indicated that the Claimant visited Service Canada in April, August, and November 2016 and in March, May, and July 2017 (GD3-37). There is some ambiguity about the first visit date, but I have accepted that it is no later than six weeks from the date of his termination.

[64] I accept the Claimant's evidence that his first visit to Service Canada was in early April and that it was as much as six weeks after his separation from employment. For the purpose of this appeal and for calculation purposes, I find his first visit to be April 7, 2016, six weeks from February 25, 2016, his last day of work, according to his Record of Employment (ROE).

[65] Also according to his ROE, the Claimant had 2010 hours of insurable employment as at February 25, 2016. As regular employee, he worked a 40-hour work week. There is no suggestion that any of those hours should not be accepted as insurable.

[66] As at April 2016, the regional rate of employment in the region in which the Claimant lives was 6.3%. According to s. 7(2) of the EI Act, the required number of hours of insurable employment necessary to qualify would be 665 hours. Even if the approximately 240 hours of insurable employment represented by the six weeks in pay periods 25, 26, and 27 of his ROE were deducted from the 2010 hours of insurable employment he had accumulated when he first left his employment, he would still have well over 665 hours. Therefore, I find that the Claimant had sufficient hours of insurable employment to qualify to receive benefits as at April 7, 2016.

[67] Having found that the Claimant had good reason for his delay from April 7, 2016, and that he was qualified to receive benefits as at April 7, 2016, I direct that the Commission allow the antedate to April 7, 2016.

Stephen Bergen
Member, Appeal Division

HEARD ON:	September 25, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. C., Appellant Louise Laviolette, Representative for the Respondent