



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v JD*, 2021 SST 101

Tribunal File Number: AD-20-852

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: March 16, 2021

DECISION AND REASONS

DECISION

[1] I am allowing the appeal. I have made the decision that the General Division should have made. The Claimant did not have good cause for the delay until he had a relapse of his Multiple Sclerosis near the end of July 2019. By the time of his relapse, the Claimant no longer had enough insurable hours in his qualifying period to obtain Employment Insurance benefits.

OVERVIEW

[2] The Respondent, J. D. (Claimant), lost his employment on May 27, 2018, and obtained a substantial severance package totalling 65 weeks. He did not apply for Employment Insurance benefits immediately for two reasons. His first reason was that he believed he had to wait until he had exhausted his weeks of severance pay. His second reason was that he was experiencing physical difficulties related to the progression of his Multiple Sclerosis (MS).

[3] The Claimant applied for benefits on April 28, 2020. The Appellant, the Canada Employment Insurance Commission (Commission), told him he did not qualify for benefits because he did not have enough hours of insurable employment in his qualifying period. As a result, the Claimant asked the Commission to antedate his claim to the date that he lost his employment, so that he would qualify for benefits. The Commission refused to antedate his claim, because it did not accept that he had good cause for delaying his application for the entire period of the delay. The Commission would not change this decision when the Claimant asked it to reconsider.

[4] The Claimant appealed the Commission's decision to the General Division of the Social Security Tribunal. The General Division allowed the appeal, finding that the Claimant had good cause for the entire period of the delay. The Commission is now appealing the General Division decision to the Appeal Division.

[5] I have allowed the appeal. The General Division made an error of law because it did not consider how the relevant case law applied over the entire period of the delay. I have corrected that error and made the decision the General Division should have made. I find that the Claimant

did not have good cause for the delay until July 2019 when he experienced a serious MS relapse and deterioration in his symptoms.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[6] “Grounds of appeal” are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:¹

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUES

[7] Did the General Division make an error of law by failing to apply the relevant case law to the entire period of the delay?

[8] Did the General Division make an important error of fact when it considered the claimant’s medical condition to be relevant over the entire period of the delay?

ANALYSIS

[9] The *Employment Insurance Act* (EI Act) says that a claimant’s benefit period begins on the Sunday of the week in which the claimant has an interruption of earnings, or the Sunday of the week in which the initial claim for benefits is made—whichever is later.² The Commission decides if a person qualifies to receive benefits in the benefit period by looking at how many hours of insurable employment the claimant has accumulated in the qualifying period. The qualifying period is usually the 52-week period immediately before the benefit period.³

¹ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² Section 10(1) of the EI Act.

³ Section 8(1) of the EI Act.

[10] However, the EI Act also says that the Commission may antedate a claimant's application so that it can establish the benefit period on an "earlier day." For the Commission to antedate, the claimant must show that he or she had a good reason for the delay throughout the entire period of the delay. This is the period that begins on the earlier day and ends on the day when the initial claim was made.⁴

Issue 1: Failure to apply the relevant case law to the entire period of the delay

[11] The Commission argued that the General Division failed to apply relevant case law. According to the Commission, the General Division was required to follow the direction of the Federal Court of Appeal from its decision, *Canada (Attorney General) v Somwaru*.⁵

[12] In the *Somwaru* case, the claimant did not believe that he was not eligible for benefits because he was receiving a pension. He did not apply for benefits until about three months after he lost his job, when a friend told him he could or should still apply for benefits.

[13] The Commission had said that the claimant in *Somwaru* did not have good cause for the delay. The Court agreed with the Commission. It framed the issue this way:

The issue is therefore whether a claimant who took no positive steps to verify his beliefs can rely on his ignorance of the law and good faith in claiming "good cause" under subsection 10(4).

[14] *Somwaru* held that a claimant must take reasonably prompt steps to understand his or her obligations under the EI Act, unless there are exceptional circumstances. This would include a claimant's obligation to make the initial claim in a timely manner. The Court referred to its earlier decision in *Carry*,⁶ where it had said this:

"[...] a reasonable person is expected to take reasonably prompt steps to determine her entitlement to Employment Insurance benefits. Ignorance of the law and good faith, the reasons offered for the delay [...] have been held to be insufficient to amount to good cause.

⁴ Section 10(4) of the EI Act.

⁵ *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

⁶ *Canada v. Carry*, 2005 FCA 367.

[15] In *Somwaru*, the Court found that the claimant had not taken reasonably prompt steps and that his receipt of a pension was not an exceptional circumstance.

[16] In the present appeal, the Commission argues that the General Division did not identify any exceptional circumstance that would excuse the Claimant from taking reasonably prompt steps in the period from May 27, 2018, to the end of July 2019 (the First Period). Additionally, the Commission argues that there was no evidence by which the General Division could have found that the Claimant's MS was an exceptional circumstance throughout the First Period.

[17] The Claimant's representative is asking me to infer that the General Division considered *Somwaru* even in relation to the First Period. He states that the General Division cited the *Somwaru* decision and ultimately concluded that the Claimant had good cause. According to the Claimant's representative, this means that the General Division must have applied *Somwaru*.

[18] The General Division cited appropriate case law, and I understand that this suggests that the General Division was aware of how it was supposed to analyze the evidence to reach its conclusions. I also understand that the General Division ultimately decided that the Claimant had good cause throughout the period of the delay.

[19] However, I do not agree that this enables me to presume that the General Division correctly applied the law. The Federal Court of Appeal considered the same issue in the case of *Canada (Attorney General) v Kaler*,⁷ which was also cited by the General Division. In *Kaler*, the Court considered that the Board of Referees⁸ had cited the legal test in *Canada (Attorney General) v Albrecht*⁹ but had not examined the facts in relation to the test. The Umpire (the final level of appeal) upheld the Board of Referees decision, but then the Federal Court of Appeal set the Umpire decision aside. The Court said that the Board of Referees failed to apply the law to the facts and that the Umpire should have intervened.

[20] The General Division did not find as fact that the Claimant took any particular steps during the First Period to understand his obligations under the EI Act. If it had been applying

⁷ *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁸ The Board of Referees was the first level of appeal under the former Employment Insurance administrative appeal scheme. The Umpire was the final level of appeal outside of the courts.

⁹ *Canada (Attorney General) v Albrecht*, A-172-85.

Somwaru, it would have been required to do so. Likewise, the General Division did not make required findings of fact to show any exceptional circumstance. The General Division did not find that the symptoms or effects of the Claimant's MS prior to his relapse (or anything else beyond the Claimant's assumptions) interfered with the Claimant's ability to inquire as to his obligations under the EI Act.

[21] I have no reason to believe that the General Division applied *Somwaru* to the facts of the case. The General made an error of law by not applying relevant case law.

[22] For the record, I accept that the case law cited by the General Division was appropriate and sufficient. It would not have made an error of law if the General Division did not consider any other case law other than those decisions that it cited. The problem is not that the General Division cited the wrong law or failed to cite applicable law. The problem is that it did not apply even the case law that it cited.

[23] If I had been able to infer that the General Division applied *Somwaru* in some fashion, the General Division would still have made an error by failing to make required findings of fact. The decision does not reveal that the General Division analyzed the evidence to find what steps the Claimant took to understand his obligations in the First Period. The General Division did not find what circumstances existed in the First Period that could have interfered with his ability to understand his obligations. The General Division could not (and did not) conclude that the Claimant took "reasonably prompt" steps in the First Period. It could not (and did not) conclude that any exceptional circumstance existed in the First Period.

[24] Even if the Claimant's representative were right that the General Division somehow bridged from the cited case law to its conclusion, it did not show me how it built that bridge. The Claimant's representative has tried to build the bridge for me. He states that there was evidence before the General Division to suggest that the Claimant's MS condition was affecting him even prior to his relapse. He argues that the General Division member must have had this evidence in mind when he found that the Claimant had good cause throughout the entire period of the delay.¹⁰

¹⁰ AD6-10, para 52.

[25] Regardless, the decision itself does not tell me whether the General Division considered the evidence to reach necessary findings of fact. It does not tell me if it properly applied the law to those necessary findings. The General Division's reasons for its decision are not transparent or intelligible reason. If it made no other error of law, it would still have made an error by providing inadequate reasons.

[26] The Claimant says that there was evidence before the General Division that the Claimant's MS affected his ability in the First Period to obtain information on his EI obligations Act. This kind of evidence would be relevant to whether the General Division made the right decision on the facts. However, that kind of evidence would not rebut the Commission's argument that the General Division made an error of law in how it reached its decision.

The Claimant's other arguments in support of the General Division decision.

[27] Some of the Claimant's other arguments are intended to support the General Division's findings and conclusions as they relate to other periods, after the First Period (subsequent periods).

[28] However, I will continue to focus on the First Period. The Commission stated that it accepts that the General Division properly considered the Claimant's medical condition as an exceptional circumstance after the Claimant's relapse at the end of July 2019. I agree with the Claimant and the Commission to the extent that the General Division made no error in finding that the Claimant had good cause during any subsequent period.

[29] In other words, it was open to the General Division to find that the Claimant had memory and cognitive problems after his MS relapse, and that these problems interfered with his ability to apply for benefits. And it was consistent with the case law for the General Division to conclude that the Claimant's medical problems (after July 2019) represented an exceptional circumstance is consistent with the case law.¹¹

[30] In the following paragraphs, I will address the Claimant's other arguments in support of the General Division's finding of "good cause" in relation to the First Period.

¹¹ General Division decision, para 13 and 14.

1. The General Division was entitled to rely on the Commission's admission

[31] The first of the Claimant's other arguments is that the Commission "admitted" that the Claimant had good cause in the First Period.¹² The Claimant suggests that the General Division was free to rely on this admission.¹³

[32] The Claimant notes that the Commission's written submissions to the General Division acknowledged that he had good cause for the delay in this period.¹⁴ The Commission wrote that the Claimant "should have been aware that **his severance package was to end** on or about 8 August 2019, and accordingly he ought to have applied for benefits **on or about that date.**"¹⁵ The Claimant understood that this statement meant that the Commission accepted that he had good cause during the First Period. He argues that the question of good cause in the First Period was not an issue that was before the General Division.¹⁶

[33] I agree that the Commission's submissions to the General Division suggests that it was not disputing that the Claimant had good cause in the First Period. The reconsideration file includes other notes in which a Commission agent appears to have acknowledged that the Claimant had "good cause" during the First Period. All of these notes and submissions are evidence that the Commission once took this view. However, they are not evidence that the Claimant actually had good cause in the First Period.

[34] The Commission may take any position it likes, but the General Division does not have to accept the Commission's position. The Commission's position did not relieve the Claimant of the burden of proving that he had good cause during the First Period.

[35] The General Division clearly had jurisdiction over the entire period of the delay, including the First Period. The Claimant appealed the reconsideration decision of October 6, 2020. That decision maintained the Commission's August 13, 2020, decision that the Claimant

¹² AD6-6, para 26.

¹³ AD6-8, para 41.

¹⁴ AD6-8, para 40.

¹⁵ GD4-3, last paragraph.

¹⁶ AD6-8, para 42.

had not proven that he had good cause to apply late for benefits, “between May 27, 2018, and April 26, 2020.”¹⁷

[36] Furthermore, “good cause” is a not a fact that may be admitted. “Good cause” is a legal determination under section 10(4) of the EI Act. It has been considered and interpreted by the courts. The Commission cannot antedate an initial claim for benefits until it has concluded that a claimant has good cause. Likewise, the General Division could not find “good cause” in the First Period without determining that the facts establish “good cause,” as it has been interpreted in case law. It was free to accept the Commission’s concession, but only if it was consistent with the law and the facts.

2. The Claimant relied on the Commission’s position on the First Period

[37] At his Appeal Division hearing, the Claimant’s representative would not go so far as to say that the General Division hearing was unfair. However, he argued that the Claimant might have presented more evidence about why he delayed his application during the First Period, if the Claimant had thought he could prove good cause for that period. According to the Claimant’s representative, the Commission’s position led the Claimant to believe that he did not have to justify his delay during the First Period.

[38] I have listened to the entire audio recording of the General Division hearing. The Claimant was not represented and the Commission representative did not attend the hearing. As a result, the General Division tried to assist the Claimant to provide evidence by asking questions.

[39] I agree with the Claimant that the member directed much of his questioning to the Claimant’s reasons for delay in the subsequent periods, and that the Claimant provided little evidence about the First Period.

[40] However, I do not accept that the General Division excluded the delay in the First Period from its consideration, or that it should have excluded it. The member stated early in the hearing

¹⁷ GD3-21.

that he would be looking at the whole period of the delay, from May 27, 2018, to April 26, 2020.¹⁸

[41] In addition, the member gave the Claimant the opportunity to expand on his reasons for delaying his application during the First Period. After stating that he was “looking back” to the end of May 2018, the Member told the Claimant that he would assume — “unless the Claimant said otherwise”—that the Claimant did not apply because he received the severance package.¹⁹ The Claimant confirmed that this was correct. Later, the General Division told the Claimant that nothing was stopping the Claimant from applying for benefits when he first received the severance. He added that the Claimant had indicated from the beginning that he did not apply because he had the severance package and figured that it would have to run out before he would be eligible.”²⁰ Again, the Claimant stated that this was correct.²¹

[42] Whatever the Claimant thought about the Commission’s submissions, the General Division let him know that it would be looking at the entire period of the delay. The General Division gave him opportunities to present additional evidence about his reasons for delay in the First Period. The Claimant clearly confirmed that he did not believe he could apply during the First Period because he was still receiving severance payments, which was consistent with his earlier statements to the Commission.²²

3. The Effect of Misrepresentation

[43] The Claimant also argued that the General Division could have found good cause based on the Commission’s misrepresentations about the law.²³

[44] However, the Claimant is asking me to dismiss the appeal and uphold the General Division decision. He is not arguing that the General Division made an error by ignoring his

¹⁸ Audio recording of General Division hearing at timestamp 00:09:25.

¹⁹ Audio recording of General Division hearing at timestamp 00:33:45.

²⁰ Audio recording of General Division hearing at timestamp 00:34:50.

²¹ Audio recording of General Division hearing at timestamp 00:35:15.

²² GD3-19, 25, 34.

²³ AD6-9, 10 at para 50–51.

evidence or failing to acknowledge his arguments. What the General Division could have done is not relevant to the errors argued by the Commission.

[45] I will return to the Claimant's misrepresentation argument later in my decision when I discuss remedy.

Issue 2: Consideration of the Claimant's medical condition over the entire period of the delay

[46] The Commission argued that it was an error of law for the General Division to consider the claimant's medical condition to determine that the Claimant had good cause for the entire period of the delay, including the First Period. The Commission states that there was no evidence that the Claimant's health had any role in delaying his application from May 27, 2018, to the end of July 2019.²⁴

[47] At the same time, the Commission's representative acknowledged in its oral submission to the Appeal Division that it is not clear whether the General Division actually did consider how the Claimant's health affected him in the First Period.

[48] For his part, the Claimant agreed with the Commission that the General Division considered the Claimant's MS to be a relevant circumstance for the entire period, even for the First Period. However, the Claimant does not see this as an error. According to the Claimant's interpretation, the General Division must have understood that he was already experiencing difficulties with his MS in the First Period. It must have viewed the effects of MS as an exceptional circumstance even before the Claimant's relapse.²⁵

[49] I do not accept that the General Division made an error by considering that the Claimant's medical condition played a role in delaying his application in the First Period. I have already decided that the General Division did not evaluate how the Claimant's condition affected him in the First Period, and that it did not determine that it was an exceptional circumstance at that time. As the Commission acknowledges, the General Division's reasons are not clear. I

²⁴ AD2-8.

²⁵ AD6-8, para 48.

cannot presume to know what the General Division member was thinking when he accepted that the Claimant had good cause throughout the entire period of the delay.

[50] I will review the evidence to consider if the Claimant's MS played a role in delaying his application in the First Period, in the following Remedy section of my decision.

Summary of Errors

[51] I have found that the General Division made an error of law in how it reached its decision. This means that I must now consider what I should do to remedy that error.

REMEDY

[52] I have the authority to change the General Division decision or make the decision that the General Division should have made.²⁶ I could also send the matter back to the General Division for it to reconsider its decision.

[53] Both the Claimant and the Commission suggest that the General Division record is complete and that I should make the decision that the General Division should have made. I agree that the record is complete. Both parties have had the opportunity to present evidence on each issue that I must decide, and there is some evidence on each issue. Since the *Social Security Tribunal Regulations* require the Tribunal to conclude the appeal as quickly as the circumstances and considerations of fairness and natural justice permit, I will make the decision.

The First Period

Reason for delay

[54] The only reason given by the Claimant for the delay in the First Period was his understanding that he could not apply until he had exhausted the severance package given him by his employer. He was mistaken on this point. It is true that he would not have been able to collect benefits until the Commission had fully allocated his severance, but he would have qualified for benefits at the time he lost his job. The Commission expects claimants to file a

²⁶ My authority is set out in sections 59(1) and 64(1) of the DESD Act.

claim in a timely manner, which the Commission considers to be four weeks of the week in which they qualify to apply for benefits.²⁷ Claimants are qualified to apply as soon as they have an interruption of earnings, which usually follows their last payday.

[55] In other words, the Claimant was ignorant of the legal requirements of the EI Act. This is the only reason why he waited to apply for benefits during the First Period. The law is clear that ignorance of the law is not good cause for a delay, in itself.

Efforts by the Claimant to understand his obligations

[56] The Claimant's representative referred to *Canada (Attorney General) v Albrecht*²⁸ in his oral submissions to the Appeal Division. The *Albrecht* decision confirmed that ignorance of the law is not an excuse for delay, but it also acknowledged that ignorance of the law does not **exclude** good cause. In other words, a claimant may be found to be ignorant of the law and still have good cause,

[57] The Claimant is correct about this. However, the principle from *Somwaru* is that a claimant who is ignorant of his or her obligations under the EI Act must still take reasonably prompt steps in an attempt to discover those obligations.

[58] There is no evidence that the Claimant made any effort to obtain information on his obligations. There is no evidence that he called the Commission, visited Service Canada in person, or reviewed Employment Insurance information online during the First Period. In fact, the Claimant told the Commission that "he did **not** [contact Service Canada about his rights and obligations] and again said that he had never applied before so **did not know** that he should have."²⁹ When he was telling the General Division about the termination letter that he received, the Claimant said he would have expected the employer to tell him he had four weeks to apply.³⁰ He said that no one from HR (Human Resources) advised him to apply right away.³¹

²⁷ Digest of Benefit Entitlement Principles, Policy 3.1.1, accessed at https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-3/antedate.html#a3_1_1

²⁸ *Canada (Attorney General) v Albrecht*, A-172-85.

²⁹ GD3-25.

³⁰ Audio record of General Division hearing at timestamp 00:37:10.

³¹ Audio record of General Division hearing at timestamp 00:37:40.

[59] I find that the Claimant did not take reasonable steps to understand his obligations under the EI Act.

Exceptional Circumstances

[60] Having said that, *Somwaru* also allowed that the Commission may still antedate a claim where there are exceptional circumstances to explain why the claimant did not take reasonable steps.

1. Impact of MS as an exceptional circumstance

[61] I do not accept that the Claimant's MS was an exceptional circumstance in the First Period.

[62] The Claimant told the Commission that he had a relapse of his MS condition in July 2019, but that he had been in remission for nine years.³² That means that he had already been living with MS for several years before he lost his employment.

[63] The Claimant argues that there was evidence in front of the General Division that he was having trouble with mental processing and with memory even before his relapse. His representative identified specific points in the audio record of the General Division hearing where he says that the Claimant spoke of the effects of MS.

[64] I have reviewed the audio record and I have paid particular attention to the times to which the Claimant's representative referred. I agree that the Claimant spoke in general terms of the effects of MS.³³ However, the Claimant did not explain to the General Division how MS actually affected him during the First Period when he was still in remission. There was no evidence before the General Division of any processing or memory problem or any other MS symptom or effect that operated to prevent the Claimant from informing himself of his obligations. The Claimant himself has never said that his condition interfered with his ability to

³² GD3-26.

³³ Audio record of General Division hearing at timestamp 00:12:55, 15:35

apply in the First Period. He has always maintained that he did not apply in the First Period because he did not know he could apply before his severance ran out.³⁴

2. *Misrepresentation as an exceptional circumstance*

[65] I do not accept that any misrepresentation by the Commission was an exceptional circumstance explaining why the Claimant did not apply in the First Period.

[66] The Claimant argues that the Commission misrepresented its position when it told him that he would have had good cause while he waited for the end of his severance payments. However, the misrepresentations in the reconsideration file and the position taken by the Commission in its submission to the General Division all occurred well **after** the Claimant's severance payments were finished. They did not cause the Claimant to delay his application during the First Period, so they are not an exceptional circumstance relevant to the Claimant's reason for delaying his application.

[67] The Claimant also argues that it is "highly likely" that the Commission may have made some other misrepresentation during the First Period.³⁵ I think the Claimant's representative believes the Commission misinformed the Claimant during the First Period because it misinformed the Claimant more than once after he finally applied for benefits. His representative refers to the Claimant's evidence that he had a friend in a "similar situation." He argues that these things demonstrate that the Commission has a practice of telling claimants that they have good cause while they wait for their severance.

[68] However, I give little weight to any of this. The Commission might have been willing to accept as good cause that the Claimant, in his particular circumstances (or any other claimant in their particular circumstances), did not know he could apply until his severance payments were finished. However, this does not mean that this is the practice of the Commission in all circumstances.

³⁴ GD3-25, GD3-34, Audio record of General Division hearing at timestamp 00:33:45; 00:35:01.

³⁵ AD6-10, para 50.

[69] The Claimant has spoken of only one other person, a friend.³⁶ What little we know of this friend's circumstances reveals at least one significant difference. The friend had a delay of nine weeks while he presumably waited for severance. This is significantly less than the 16-month delay between the Claimant's separation from employment and the end of his severance payments. With a nine-week delay, the Claimant's friend may well have qualified even without an antedate. However the Claimant did not say whether his friend asked for an antedate or needed one.

[70] Furthermore, the Commission may be willing to accept that a claimant has good cause in a particular situation, where a claimant has delayed his or her application to the point of disqualification. However, that does not mean that it would suggest the same thing to a claimant who could still qualify by making an application right away. In the Claimant's case, it seems a Commission agent was willing to accept the Claimant's reason during the First Period as good cause when he was asking for the antedate. However, this does not mean that the Commission also advised the Claimant to delay during the First Period when he could still have qualified.

[71] I decline to infer the existence of a certain Commission practice, or to infer that the Commission advised the Claimant according to that practice. The evidence supporting such an inference is very weak. I think it is speculative to suggest that the Commission misrepresented to the Claimant the implications of delaying his application, while the Claimant was still within the First Period.

3. All of the circumstances

[72] The Claimant also asks that I consider all of the Claimant's circumstances together to find that the Claimant had exceptional circumstances. I have already discounted the Claimant's diagnosed MS and the Commissions' misrepresentations, because there was no evidence that they affected his ability to look into his obligations under the EI Act in the First Period. The Claimant also asks me to consider his age, inexperience with the system, a confusing online forum.

³⁶ GD3-26.

[73] According to the Claimant's submissions, the Claimant was 56 years old when his severance expired.³⁷ In my view, there is nothing remarkable about his age. The online application process may be confusing to some but that does not prevent anyone from calling Service Canada or going in to a Service Canada office. The fact that he was unfamiliar with the Employment Insurance application process is true of almost everyone who does not apply because they are unfamiliar with their obligations.

[74] The Claimant did not take reasonable steps to understand his obligations in the First Period. Neither his diagnosed MS condition, nor any Commission misrepresentation, nor any combination of these factors represented an exceptional circumstance by which he might be excused from taking reasonable steps.

[75] The Claimant did not have good cause for the delay prior to his relapse at the end of July 2019.

Subsequent periods

[76] I have found that the Claimant was not entitled to an antedate to any date prior to his MS relapse because he did not have good cause for the delay before his relapse.

[77] However, I confirm that the Claimant did have good cause for delaying his application from the time of his relapse until he applied for benefits. As I noted, the General Division's decision that the Claimant had good cause in the periods after his relapse is in accordance with the law and it is supported by the facts found by the General Division.

Qualification for benefits

[78] The evidence establishes that the Claimant's relapse occurred sometime in the third week of July 2019.³⁸

[79] I have found that the Claimant was not entitled to an antedate to any date prior to his relapse because he did not have good cause for the delay before his relapse. The Claimant would

³⁷ AD6-3, para 9.

³⁸ GD2-6

have been entitled to an antedate to the date that he first experienced a relapse **except that** section 10(4) of the EI Act also requires the Claimant to show that he would have qualified for benefits on that earlier day.

[80] A claimant qualifies for benefits by having accumulated a certain number of hours of insurable hours in what is ordinarily the 52-week period that ends with the beginning of his or her benefit period.³⁹ In the Claimant's case, his benefit period would have begun on April 26, 2020, the Sunday of the week in which he made his initial claim for benefits.⁴⁰ The Claimant stopped working at the end of May 2018 and his Claimant's relapse was in July 2019. He would have had zero hours of insurable employment in the 52 weeks prior to his relapse in the third week of July 2019.

[81] The Claimant is undoubtedly experiencing many hardships because he has MS, especially after his relapse. I recognize that this decision represents a different kind of setback for him. I am sure it seems unfair that the Commission can change its position, or that I am not requiring the Commission to pay benefits in accordance with its original position. However, I have to follow the law. The law does not allow me to accept that the Claimant had good cause in the First Period just because he assumed that he could not apply while he was receiving severance. The Claimant would not have qualified for benefits at the end of the First Period—unless he could capture enough insurable hours within some kind of extension to his qualifying period.

[82] As far as I can tell, the Commission has not considered whether the Claimant might qualify for an extension of his qualifying period.⁴¹ The Commission originally decided that the Claimant did not have good cause for the entire period of the delay and particularly the period from January 20, 2020, when the Claimant had partially recovered from the relapse.⁴² It is possible that the Commission did not consider the possibility of an extension to the Claimant's qualifying period because of its view that the Claimant did not have good cause after January 20, 2020. I have confirmed that that the Claimant had good cause for the delay from the third week in July 2019 to the date of his application.

³⁹ Section 8(1) of the EI Act.

⁴⁰ Section 10(1) of the EI Act.

⁴¹ Per section 8 of the EI Act.

⁴² GD3-35.

CONCLUSION

[83] I am allowing the appeal. The Claimant did not have good cause for the **entire** period between when he left his employment on May 27, 2018, and when he applied on April 28, 2020. He is not entitled to an antedate to May 27, 2018, or to any period before the third week of July 2019. He could only qualify for benefits in July 2019, if he could obtain a sufficient extension to his qualifying period that he would qualify for benefits at that time.

Stephen Bergen
Member, Appeal Division

HEARD ON:	March 9, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Angela Fricker, Representative for the Appellant J. D., Respondent Nathanael Bowles, Representative for the Respondent