Citation: *SZ v Canada Employment Insurance Commission*, 2024 SST 1267

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	S. Z.
Respondent:	Canada Employment Insurance Commission
Representative:	Melanie D'Aquanno

Decision under appeal:	General Division decision dated April 15, 2024 (GE-23-3281)

Tribunal member:	Stephen Bergen
Type of hearing:	In person
Hearing date:	September 24, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	October 18, 2024
File number:	AD-24-349

Decision

[1] I am dismissing the appeal.

Overview

[2] S. Z. is the Appellant. I will call her the Claimant because this appeal is about her claim for Employment Insurance (EI) Benefits.

[3] The Claimant applied for benefits in 2023, saying that her "last day worked" was July 31, 2012. She asked for an antedate to July 29, 2012, saying that she only just obtained information from her employer that allowed her to determine that her employer stopped paying her for a period beginning in July 2012.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), refused her request for an antedate to July 29, 2012, saying that she did not prove that she had good cause to apply late for benefits.

[5] The Claimant applied for a reconsideration, but the Commission maintained its original decision. When she appealed to the General Division, the General Division dismissed her appeal. It agreed that she did not have good cause for the entire period of the delay.

[6] In her appeal to the General Division of the Social Security Tribunal, the Claimant asked the General Division to also consider alternate antedate dates including July 2009 (which was prior to the interruption of earnings she asserted in her application for benefits), and June 2013.[1] The General Division said that it could only look at the Commission's refusals to antedate her claim to July 29, 2012. [2]

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[1] See GD20-3.

[2] Note: The General Division could not possibly have had jurisdiction over any potential periods of benefit entitlement prior to July 29, 2012, the date of the interruption of earnings on which the antedate request was based. **So, I will not be considering whether the General division ought to have considered an antedate to 2009.** When the Claimant applied for benefits in 2023, she was asking for an antedate to July 2012. This was based on her understanding that she had an interruption of earnings in July 2012. There is no interpretation of "good cause for delay" by which I could consider an "earlier day," before July 2012.

[7] The Claimant obtained leave and appealed to the Appeal Division.

[8] I am dismissing the Claimant's appeal. She has not shown me that the General Division made any of the errors that I may consider.

Preliminary matters

Postponement

[9] The Claimant had asked for a postponement prior to the in-person oral hearing, which I had denied. At the hearing, I asked the Claimant if she wished to make additional submissions on her request for a postponement, to determine whether an adjournment was required.

[10] Under the *Social Security Tribunal Rules of Procedure*, I may only reschedule a hearing if I accept that it is necessary for a fair hearing.[3]

[11] The Claimant said she was waiting for a CRA ruling regarding her insurable hours and earnings in 2013 and 2014, and whether she had been an employee or an independent contractor. She was also waiting for some kind of Labour Relations ruling or guidance. However, she was unable to relate the expected rulings to her request for an antedate. I informed the Claimant that I was not satisfied that the rulings were such that they could affect my decision. I told her that I did not accept that it would be unfair to refuse her request for postponement or adjournment.

[12] In her request for postponement, the Claimant also stated that she did not believe the Commission investigation had been sufficient. She asked the Appeal Division to wait until the Commission completed its investigation. I informed the Claimant that the Commission investigation was complete—so far as it was concerned—and that I did not have oversight power over the Commission or the ability

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Nor is there any way that this could have made it easier for the Claimant to establish good cause throughout the period of the delay.

[3] See section 43(3) of the *Social Security Tribunal Rules of Procedure.*

to direct it to investigate further. Her desire that the Commission conduct a more thorough investigation did not justify a postponement or adjournment either.

New evidence

[13] After the Claimant filed her application to the Appeal Division, but before her oral hearing, the Claimant sent the Appeal Division eight separate written submissions.[4] Some of those submissions contain new documents or new assertions of fact, which were not before the General Division. I will not be considering any part of the Claimant's submissions that describe, reference, or attach evidence that was not before the General Division.

[14] The Appeal Division may only consider whether the General Division made an error in how it considered the evidence that was before it. Therefore, new evidence is not generally relevant to whether the General Division made an error. The courts have confirmed that it is not the Appeal Division's role to consider new evidence.[5]

[15] There are narrow exceptions under which the Appeal Division may consider new evidence.[6] However, the Appeal Division cannot consider evidence that is provided to help a party establish any facts relevant to the issues of the appeal.

Post-hearing submissions

[16] The Claimant also provided three new submissions to the Appeal Division after the oral hearing.[7] I will not be considering any of the post-hearing submissions.

[17] The Claimant had ample opportunity to make her argument in the many written submissions she provided prior to the hearing, and in her oral submissions. In addition, much of what she provided in post-hearing submissions is repetitive, incorporates new evidence, or is not relevant to the issue of antedate.

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[4] See AD01B, AD05, AD06, AD08, AD10, AD11, AD12, and AD13.
[5] *Gittens v Canada (Attorney General)*, 2019 FCA 256; *Mohamed v. Canada (Attorney General*), 2016 FC 48; *Parchment v. Canada (Attorney General),* 2017 FC 354.
[6] *Sharma v Canada (Attorney General),* 2018 FCA 48.
[7] See AD14, AD15, and AD16.

[18] Fairness requires that parties have an opportunity to be heard. This does not mean that the Tribunal must continue to receive submissions indefinitely.

Issue

[19] The issues in this appeal are:

a) Procedural fairness

i. Did the General Division act in a way that suggested she had prejudged the matter or did her actions give rise to a perception of bias?

ii. Did the General Division otherwise act unfairly by

a. refusing to disclose evidence?

b. failing to direct the Commission to complete its investigation?

b) Jurisdiction

iii. Did the General Division fail to exercise its jurisdiction when it failed to consider whether the Commission had acted judicially?

iv. Did the General Division exceed its jurisdiction by considering whether the Claimant had good cause for the delay from an antedate date of July 29, 2012 (or did it make an error of fact in failing to consider the Claimant's evidence that she was working and had earnings on July 29, 2012)?

v. Did the General Division fail to exercise its jurisdiction by not considering whether the Claimant qualified for benefits as of the antedate date of July 29, 2012?

vi. Did the General Division fail to exercise its jurisdiction by neglecting or refusing to consider whether the Claimant could obtain an antedate to a more recent day than July 29, 2012?

c) Law

vii. Did the General Division make an error of law in how it interpreted section 10(4) of the *Employment Insurance Act* (EI Act)**?**

Analysis

General Principles

[20] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division made an error of law when making its decision.
d) The General Division based its decision on an important error of fact.[8]

[21] The Claimant has made arguments touching on all of the available grounds of appeal.

Error of procedural fairness

[22] There is some question as to what the appeal is about. The Commission believes the appeal is about whether the Claimant was entitled to an antedate to July 29, 2012, only. The Claimant says that she is no longer interested in pursuing an antedate to July 29, 2012, but suggests that the General Division should have considered other possible antedates.

[23] Regardless of which party is correct about the legal or factual issue, the Claimant argued that the General Division acted in a way that was procedurally unfair. An error of procedural fairness has the potential to invalidate the General Division decision. So, I

[8] 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* (DESDA).

will look at this error individually before I consider how to address these competing views on the substance of the appeal.

[24] The Claimant argued that the General Division acted in such a way as to suggest it was biased against her. She also asserted that it improperly refused to conduct an investigation (or require the Commission to complete its investigation), and that it refused to disclose to her certain evidence that was relevant to her appeal.

– **Bias**

[25] I do not accept that the General Division member did or said anything that would cause a reasonable person looking at all the circumstances to have a reasonable apprehension of bias.

[26] The Claimant told the General Division that she believed the member had already made up her mind before hearing the appeal. Her principal reason for asserting this was that the General Division had refused to postpone her hearing. The Claimant made multiple requests to postpone based on her desire to obtain evidence. The General Division granted her one postponement to obtain legal advice but did not grant her other requests. The member was not satisfied that the Claimant was seeking evidence that was relevant to the issues she needed to decide.

[27] The Claimant believed the member could not give her a fair hearing, so she asked the General Division member to recuse herself. She argued that the General Division member should have accepted her reasons for postponing and that it "rushed to a hearing." She also noted that the member refused to direct the Commission to provide evidence/log notes or to complete its investigation, and that she had referred to her submissions as "evidence." [9]

[28] The General Division scheduled a hearing to determine whether the member ought to recuse, but the Claimant did not attend. The General Division member issued an interlocutory decision on March 18, 2024, based on the Claimant's written

[9] See GD46.

submissions. In the decision, the member found that the Claimant had not proven that she could not hear the matter fairly.[10] She refused the request to recuse.

[29] As noted by the General Division, the Claimant must establish that she has a reasonable apprehension that the General Division member was biased. The General Division outlined the test.

> … what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?[11]

[30] I find that a reasonable person would not conclude from the General Division's responses and actions that the member was biased. Most of what the Claimant now asserts as member bias concerns the General Division processes and member actions from before the March 18, 2024, interlocutory decision. To the extent that they relate to that time frame, I accept and adopt the reasons of the General Division member in the March 18 decision.

[31] I also find that the General Division member's responses and actions since March 18, 2024, do not give rise to a reasonable apprehension of bias.

[32] Many of the member's subsequent actions were simply continuations of her earlier actions, including her refusals to postpone the hearing or to direct the Commission to investigate. However, the Claimant's justification for these various requests were variations of the original requests that had already been refused. The General Division did not demonstrate bias by maintaining a consistent position in response to the Claimant's requests.

[33] In addition, the Claimant asserted that the General Division member was biased because she stated that the General Division did not receive a submission on

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[10] See GD44.
[11] See *Wewaykum Indian Band v Canada*, [2003] 2 SCR 259, 2003 SCC 45.

January 12, 2024, when the Claimant insists that she did receive it.[12] The Claimant also noted that the member indicated that a Record of Employment (ROE) was dated November 12, 2012, when it was actually dated November 13, 2012.

[34] I have access to the same appeal record that was available to the General Division. The member was correct that the Tribunal did not receive any letter or submission dated January 12, 2024. However, it did receive the January 12, 2024, submission as an attachment to correspondence dated January 17, 2024. The General Division acknowledged the January 17, 2024, letter, including the request for postponement. The request for postponement was found in the attachment dated January 12, 2024. I do not accept that the member meant to say that he had been unable to review the information in the January 12, 2024, letter. She meant only that the January 12 letter did not arrive, except later as an attachment.

[35] So far as the misstated date, this could only support a claim of bias if there was evidence that the General Division deliberately misstated that date for the purpose of reaching some preferred outcome. It is not obvious to me how the exact date of the ROE issuance could possibly be relevant to any issue that needed to be decided in the appeal, so it could not be misstated to support some particular outcome. Nor do I have any reason to believe the General Division was deliberately inserting errors in her decision. The most likely explanation is that it was a slip.

[36] The Claimant has not convinced me that the General Division member was biased or that anything she said or did might reasonably be interpreted as bias.

– **Right to be heard and to know the case**

Refusal to disclose

[37] Finally, the Claimant claimed that the General Division had evidence from the employer that it refused or failed to disclose. The Claimant may have viewed this as

[12] This is from para 18 of the General Division interlocutory decision.

another indicator of bias, but procedural fairness requires that the claimant be given a fair opportunity to know the case she must meet, regardless.

[38] If the General Division withheld relevant evidence on which it relied or that may have assisted the Claimant in her appeal, this would be an error of procedural fairness.

[39] However, the Claimant's assertion that the General Division withheld evidence is supposition only. She suggested the General Division withheld the Commission's phone log notes. She also referred to evidence of communication with the employer, and to the employer payment records supporting its ROEs, but she did not identify any other specific document.

[40] I see no evidence that the General Division referred to or considered any evidence that was withheld from the Claimant. The General Division explained in its March 18, 2024, Interlocutory Decision that any evidence received by the Tribunal from the Commission has been, and will be, shared with the Appellant.[13]

[41] The only phone log notes in the appeal record are the notes taken by Commission agents that are found in the GD3 reconsideration file. There is no transcription of phone records in the appeal record. There are no documented communications with the employer or other documents from the employer.

[42] The General Division did not refuse to disclose any relevant or potentially evidence known to it. It did not interfere with the Claimant's right to be heard or her ability to know the case.

Refusal to investigate

[43] The Claimant's arguments suggest she also believes the General Division member acted unfairly because she failed to seek and obtain evidence, and then provide it to the Claimant. However, fairness does not require the General Division to

[13] See para 62, of the March 18, 2024, General Division Interlocutory Decision.

investigate or seek out evidence to assist the Claimant's appeal. It is up to appellants to bring to their appeals the best evidence they can obtain.

[44] The General Division noted that the Claimant had requested phone log notes from the Commission but did not receive them, and that the Claimant was asking her to direct the production of such notes. The General Division explained that it did not request the phone notes because it was not satisfied the phone log was relevant to antedate, which was the only issue on appeal.[14] The member said that the Claimant did not provide her enough detail to determine the relevance of other evidence she was seeking. She said that the Claimant could explain further at her hearing and the hearing could be adjourned, if necessary.[15] The Claimant did not attend her hearing.

[45] The General Division has the authority under the **Social Security Rules of Procedure** (Rules) to ask the Commission to investigate and report on any question related to a claim for benefits. However, that power is discretionary, which means that the General Division cannot be compelled to ask the Commission anything. The Supreme Court of Canada has confirmed that tribunals control their own procedures as "masters in their own house."[16] The General Division may govern the appeal process as it sees fit so long as it is lawful and fair to the parties.

Jurisdiction

[46] The Claimant also argued that the General Division made an error of jurisdiction. She said that the General Division should have considered whether the Commission exercised its discretion judicially. When she says this, she is referring to the Commission's powers to investigate claims.

[47] Like "procedural fairness," this kind of error of jurisdiction could affect the appeal result no matter whether the General Division properly considered the July 29, 2012, antedate date or whether it should have considered some other antedate date.

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[14] See General Division decision at para 21.
[15] See General Division decision at para 35.
[16] *Prassad* v *Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC).

[48] The Claimant is correct that the nature and extent of the Commission's investigation is discretionary. She is also correct that the General Division can consider whether the Commission exercises its discretion "judicially." Acting "judicially" means that the Commission must not act with an improper purpose or in a discriminatory fashion, and it must act in good faith. It must also consider all the relevant factors but not consider irrelevant ones.

[49] Having said that, the boundaries of the General Division's jurisdiction are set by the issues considered by the reconsideration decision. If the reconsideration decision involves issues that are discretionary by nature (such as where the Commission decides to reconsider a benefit decision on its own initiative), the General Division has jurisdiction to consider whether the Commission acted judicially in reaching its reconsideration **decision**.

[50] The manner in which the Commission conducts its investigation also involves discretion. But the manner of the investigation is not a discretionary **decision**. The General Division can only review whether the Commission considered all the "factors" relevant to a discretionary decision. It does not review the sufficiency of evidence that was before the Commission when it considered the relevant factors. The General Division has no authority to impose a particular investigative standard on the Commission and does not direct the Commission to seek out any additional evidence that could be relevant to the factors it must consider when it makes discretionary decisions.

Errors related to General Division's consideration of good cause for antedate to July 29, 2012

[51] The Claimant argued that the General Division made both an error of jurisdiction, and an error of fact, when it considered whether she should be allowed an antedate to July 29, 2012.

– **Did the General Division exceed its jurisdiction by considering whether the Claimant was entitled to an antedate to July 29, 2012?**

[52] The General Division did not exceed its jurisdiction.

[53] As I noted earlier in the decision, the General Division's jurisdiction is bounded by the issues addressed in the reconsideration letter.[17] Its decision must consider the issues that were reconsidered, and it may not consider other issues. The issue in the reconsideration letter is antedate. Specifically, the Commission denied the Claimant's request for an antedate to July 29, 2012.

[54] If the Claimant believed that she could not succeed, she could have withdrawn her appeal. She had a number of other issues she wanted the General Division to address (including her entitlement to an antedate to alternate "earlier dates") and so she did not withdraw her appeal. But, because she did not withdraw, the General Division had no choice but to consider whether she was entitled to an antedate to July 29, 2012. It would have made an error of jurisdiction if it had failed to do so.

– **Did the General Division make an important error of fact by failing to consider the Claimant's evidence that she remained employed after July 29, 2012?**

[55] The General Division did not make an important error of fact.

[56] After requesting the antedate to July 29, 2012, the Claimant discovered that she would not have qualified for benefits at that earlier day. She asserts that the General Division ignored her evidence that she was working throughout 2012.

[57] She argued to the Appeal Division that she had not been separated from her employer, or experienced seven consecutive days without work or without pay. The law says that a claimant must have sufficient insurable hours to qualify to make a claim but it also requires an interruption of earnings to qualify.[18] To have an interruption of earnings under the law, a claimant must be laid off or separated from employment, and they must also have seven or more consecutive days when the claimant performed no work for the employer and received no payment from that employment.[19]

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[17] See section 113 of the EI Act.
[18] See section 7(2)(a) of the EI Act.
[19] See section 14(1) of the *Employment Insurance Regulations*.

[58] There was some evidence before the General Division, including the Claimant's own application for benefits, that the Claimant stopped working on July 31, 2012.[20] There was also some evidence that she wasn't being paid.

[59] However, the Claimant is correct that the General Division did not consider all the evidence that was potentially relevant to her appeal. The General Division did not consider that the Claimant disputed some of the information provided by the employer related to her employment status after July 29, 2012 (including the Record of Employment W25236429). The Claimant insisted that she did not have a separation from her employer in July 2012, and said that she continued to work for her employer, and that she discovered she had earnings at that time.[21] This evidence was likely relevant to whether the Claimant actually qualified for benefits on July 29, 2012.

[60] The law says that claimants must meet two conditions before the Commission may grant a request to have their claim antedated to an earlier day. They must qualify to claim benefits on that earlier day, and they must also have good cause for their delay in applying—throughout the period of the delay.[22] A claimant cannot receive an antedate without meeting both conditions.

[61] The reason the General Division did not consider the Claimant's evidence related to her employment on July 29, 2012, is that the General Division did not address both of the conditions described in the antedate "test." The reason it did not consider whether she would have qualified is because it found she did not meet the other condition: It found that the Claimant did not have good cause since July 29, 2012.

[62] I cannot find that the General Division made an important error of fact unless I find that it **based its decision** on a finding that misunderstood or ignored her evidence. She says that it ignored evidence that she continued to work in 2012. That evidence might have been relevant to whether she qualified for benefits on July 29, 2012, but it was not relevant to whether she had good cause from July 2012. The General Division's

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[20] See GD3-6 and GD3-15.
[21] There was evidence before the General Division to support the Claimant's assertion that she worked through 2012. See GD2-19, 20, 27 and 41, for example.
[22] See Section 10(4) of the EI Act.

decision was based on its finding that she did not have good cause for delaying her application, and not on whether she qualified.

[63] Once the General Division found that the Claimant did not have good cause for the delay, the Claimant could not possibly meet the test for antedate—whether she would have otherwise qualified or not.

– **Did the General Division make an error of law or fail to exercise its jurisdiction by failing to consider whether the Claimant would have qualified for benefits on July 29, 2012?**

[64] The Commission conceded that the General Division made an error by failing to fully exercise its jurisdiction, although this was not argued by the Claimant. It noted that the General Division did not consider whether the Claimant qualified on July 29, 2012. Despite its concession, the Commission maintained that it would not have changed the General Division decision.

[65] I disagree with the Commission's submission that the General Division failed to exercise its discretion.

[66] I acknowledge that the General Division would have been obligated to consider whether the Claimant would have qualified for benefits at the earlier day, if it had found that the Claimant had good cause for the delay. However, a claimant can only have their claim antedated if they meet both of the necessary conditions, as I have already explained.

[67] Once the General Division found that the Claimant did not meet one condition, it did not need to continue its analysis and examine whether she would have met the other one. It did not need to determine if the Claimant qualified on July 29, 2012, since such a finding would not be necessary to reach the decision result.

– **The Claimant's stated position on her appeal**

[68] The Claimant insists that she was not qualified for benefits as of July 29, 2012. She asked the Appeal Division to find that the General Division should **not** have considered her antedate to July 29, 2012.

[69] At her Appeal Division oral hearing, the Claimant repeated that she had not qualified for benefits in July 2012 because she had no interruption in her employment at that time.[23] She also said that she was no longer concerned about her entitlement to benefits as of July 2012. She said that she had wanted the General Division to focus on other periods.[24]

[70] The General Division considered whether the Claimant was entitled to benefits as of July 29, 2012. The Claimant has not satisfied me that the General Division made an error in how it decided to refuse her antedate **to July 29, 2012**.

[71] This means that the Claimant is not entitled to an antedate to July 29, 2012, or to receive benefits as of July 29, 2012. The Claimant herself agrees with this result, and has advocated in its favour. She has essentially conceded that the General Division was correct to find that she was not entitled to benefits as of that date.

[72] Accordingly, I do not need to consider other arguments or asserted errors that are specific to whether the Claimant would have qualified for benefits as of July 29, 2012, or whether she had good cause which reached all the way back to July 29, 2012.

Error related to General Division's consideration of good cause from an "earlier date" between July 29, 2012, and her application for benefits

– **Error of law or jurisdiction.**

[73] As noted, the Claimant acknowledges she would not have qualified for benefits on July 29, 2012, and would not have been entitled to an antedate to that date. However, she asserts that there is another more recent period in which she believes she did qualify.

[23] Listen to the audio recording of the Appeal Division hearing at timestamp 1:28:00.
[24] Listen to the audio recording of the Appeal Division hearing at timestamp 0:38:00 to 0:40:05.

[74] She argues that the General Division did not consider whether she should be granted an antedate to June 2013. She has argued that this is an error of law or of jurisdiction.

[75] There was some evidence before the General Division suggesting the possibility that the Claimant may have qualified for benefits on a more recent "earlier" date and for a different period from which she claims to have had an interruption of earnings. Specifically, the Claimant told the Commission that she had an interruption of earnings in 2013, with no earnings from either May or June through to August 2013.[25] As part of her appeal, she asked the General Division to antedate her claim so that she could receive benefits as of June 2013.[26]

[76] The law permits a claimant to have their claim regarded as having been made on an "earlier date" (than the date of their application) if they can show that they qualified to receive benefits on the earlier day and also show that they had good cause for the delay throughout the period beginning on the earlier day.[27] In theory, the allows a claimant to have their claim antedated to any "earlier date" on which the claimant qualified and, from which, they could demonstrate good cause for the delay.

[77] The Claimant is correct that the General Division did not consider whether the Claimant's claim could be antedated to June 2013 as another possible "earlier" day. It considered only whether her claim could be antedated to July 29, 2012.

[78] If the General Division limited its consideration because it misinterpreted the law, this would be an error of law. If the law required the General Division to also decide whether other antedates were possible, then the General Division may have failed to exercise its jurisdiction.

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[25] See GD5-56, para 10, where she says she had an interruption in her earnings in May, June, July, and August 2013. Also see GD3-31, para 18 and GD3-37 where the Claimant said she did not get paid in June, July, and August 2013.
[26] See GD20-3.
[27] See section 10(4) of the EI Act (para 80 to follow).

[79] However, the General Division could only have made an error in either of these ways if the law requires it to consider alternate possible antedates.

[80] Section 10(4) of the Employment Insurance Act states as follows:

> An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day 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.

[81] I have not discovered any Federal Court or Federal Court of Appeal authority that has interpreted the meaning of “earlier day” in section 10(4). However, the Appeal Division has previously considered how “earlier day” should be understood. Other decisions of the Appeal Division are not binding on me, but they may be persuasive.

[82] In J.C. *v Canada Employment Insurance Commission* (JC), the Appeal Division considered a case involving an appellant who had left Canada after losing his job. The appellant intended to apply for EI benefits when he returned. He returned about eight months after he had lost his job, and applied for benefits. The Commission told him that he no longer qualified. It also said he could not antedate his claim.

[83] The Commission’s decision on antedate did not specify a particular antedate date, but it was based on an antedate to the date of the appellant’s interruption of earnings. The Commission did not accept that he had good cause for delay from the date of his interruption of earnings.

[84] The member that originally heard the General Division appeal in JC told the appellant that he was required by law to file his claim as soon as he first qualified for benefits. It considered only whether the appellant had good cause from the date of his interruption of earnings.

[85] The Appeal Division disagreed. It found that the General Division had interpreted section 10(4) as only permitting an antedate to the interruption of earnings. The Appeal Division held that this was an error of law. It said that there is no statutory obligation on a claimant to apply at the earliest opportunity and that section 10(4) permits antedate to an "earlier day." Section 10(4) does not say that the earlier day must be the date of the interruption of earnings or the day the claimant first qualified.

[86] I accept the Appeal Division's interpretation of the law. I agree that the law allows for an antedate to a more recent day than the date the claimant first experienced an interruption of earnings or qualified for benefits.

[87] In JC, the Appeal Division applied this interpretation of law to the particular facts and found that the matter should go back to the General Division to consider whether the appellant was entitled to an antedate at some later "earlier date or dates." However, the result in JC depended heavily on the facts of the case, The Appeal Division noted as follows:

> While it is not incumbent upon the General Division to consider each and every possible "earlier day" for an antedate on its own initiative, the General Division should have clarified the scope of the antedate issue before it by canvassing the question of alternative antedates directly with the Appellant, **in light of the circumstances of this appeal**: antedate was broadly denied by the Commission; the Appellant did not request an antedate back to the interruption of earnings; he had planned to apply on a date later than the interruption of earnings; an antedate back to the interruption of earnings was potentially disadvantageous since the benefit period would end sooner; and there were obvious alternative antedates that could have been considered.

[88] In JC, the appellant did not ask the Commission for an antedate to the date he believed he experienced an interruption of earnings. He did not ask for any particular date. Likewise, the Commission denied the antedate generally. It did not deny an antedate to a specific date.

[89] In JC, the appellant knew he could not receive benefits while he was out of Canada, so he had a plan to apply for benefits when he returned. He never expected that he would receive benefits immediately following his interruption of earnings.

[90] When the General Division made the decision that was appealed in JC, it had to presume that the appellant's request, and the denial of her request, concerned an antedate to the date of the interruption of earnings. This was a consequence of how the General Division member misinterpreted the law.

[91] Unfortunately for the Claimant, the facts in the present appeal are substantially different. The Claimant believed she had an interruption of earnings on July 31, 2012. She did not then plan to receive benefits. However, when she learned about what she thought was an interruption of earnings, she asked to receive benefits for the period immediately following the interruption.[28] In response to her specific request, the Commission specifically denied the antedate to July 29, 2012.

[92] JC was also different in other significant ways. JC's delay was about eight months compared to 10 years in this case. He would not have required an antedate if he had applied only days earlier, because he would still have had sufficient hours of insurable employment to qualify. This means that the appellant in JC would have only needed to show good cause for the few days preceding his application in order to obtain an antedate to an "earlier date" when he would still have qualified. Proof of this, if it existed, would be easy to evaluate.

[93] In this case, it is unlikely the Claimant could still have qualified much later than mid-2014, based on a June 2013 interruption of earnings. Had the General Division considered June 2013 as the Claimant's antedate date or any date that she would also qualify based on the June 2013 interruption, the Claimant would still have had to show good cause for 9–10 years.

[94] A final, and important, distinction between JC and this case, is that the appellant in JC was not working between the interruption of earnings date (used as the antedate

[28] See GD3-6, Application for Benefits, and GD3-13-15, records of her discussion with the Commission.

by the Commission), and his application date: The “earlier date or dates,” to which the Appeal Division member referred could have been evaluated based on the information provided by the appellant in his claim application. Whatever “earlier date” was chosen for the antedate, the claim would be established having regard to whether the claimant qualified on that antedate date, which would be based on his insurable hours in the qualifying period that preceded the interruption of earnings.

[95] In this appeal, the claim was initially adjudicated based on the information in the Claimant’s application for benefits. This included her own assertion that her last day worked was July 31, 2012.

[96] Since then, the Claimant has determined that she did not have an interruption of earnings back in July 2012 and that she was, in fact, still working and being paid. She concluded that she would not have qualified for benefits at that time because she was still working and being paid, no matter that she had sufficient hours. As a result, she proposed an alternate antedate date so that she could obtain benefits for a different period in which she now believes she has an interruption of earnings.

[97] Therefore, the General Division could only have considered an antedate to June 2013 by reassessing the date of the interruption of earnings, the date of the establishment of the benefit period, and the total hours within the qualifying period (which would include any additional insurable hours worked since July 29, 2012).

[98] In other words, the General Division would have had to adjudicate the antedate to June 2013 based on what effectively would be a new claim.

[99] I do not believe I am departing from the decision in JC. In my view, JC never intended that an appeal of an antedate decision should require the General Division to explore alternate earlier dates that would be based on significantly different circumstances than those on which the claim was originally based.

[100] This seems to be a situation where the Claimant should reapply for benefits on the basis of the interruption of earnings she is asserting in June 2013. Perhaps she can ask to have a new application antedated, as the Commission suggested.[29]

[101] The General Division did not make an error of law. Nothing in the General Division decision leads me to believe that it interpreted the law in such a way as to require the Commission to antedate claims to the "interruption of earnings" date.

[102] Similarly, the General Division did not make an error of jurisdiction.

[103] I appreciate that the Claimant mentioned to the Commission (in the context of an argument that her ROE was in error) that she had no earnings from May-August (or June-August) 2013. I appreciate that she asked the General Division to consider June 2013 as an alternate antedate date.

[104] However, I accept that the General Division was correct in how it understood its jurisdiction. The Commission decision (maintained by the reconsideration decision) was specifically directed to July 29, 2012, the antedate date requested by the Claimant. Her request was itself dependent on the date the Claimant believed or said that she left her employment (according to her application for benefits). The Commission's decision involved some consideration of the insurable hours she had accumulated to July 29, 2012.

[105] The General Division did not fail to exercise its jurisdiction by failing to consider whether her claim could be antedated to June 2013.

Other errors

[106] The Claimant made many, separate submissions that are found in the General Division record and several submissions to the Appeal Division. Some of those submissions are lengthy, but there is substantial overlap between them.

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[29] See AD7-6, Commission's submissions—final paragraph before the Conclusion.

[107] Like the General Division, I have not addressed arguments related to falsified or inaccurate documents from the Claimant's employer, or arguments having to do with the period prior to July 29, 2012. The General Division is correct that such matters are outside the scope of the legal test that she was required to consider.[30] Likewise, they are irrelevant to whether the General Division made an error that I may consider.

[108] As the Federal Court of Appeal said in *Faullem v Canada (Attorney General)*,

> … the principle of transparency and justification does not require the decision-maker to state its position regarding each issue raised by a party and to address each and every argument that a party has advanced to support a position. I therefore do not intend to attempt to summarize the lengthy submissions made by the applicant, which are not always very clear.[31]

[109] Like the Court in *Faullem*, I have "read and reread several times the arguments put forward by the applicant to ensure that I understand them and grasp their meaning, and I have provided commentary only where I believe that it is essential. Any other argument or submission must be deemed to have been rejected as unfounded."

Conclusion

[110] I am dismissing the appeal.

Stephen Bergen
Member, Appeal Division

[30] See para 47–49 of the General Division decision.
[31] *Faullem v Canada (Attorney General)*, 2022 FCA 29