Citation: *FM v Canada Employment Insurance Commission*, 2025 SST 345

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	F. M.
Representative:	Emma Lodge
Respondent:	Canada Employment Insurance Commission
Representative:	Linda Donovan

Decision under appeal:	General Division decision dated September 23, 2024 (GE-24-1849)

Tribunal member:	Stephen Bergen
Type of hearing:	Videoconference
Hearing date:	March 25, 2025
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	April 9, 2025
File number:	AD-24-715

Decision

[1] I am dismissing the appeal.

[2] The General Division made an error of fact. I have corrected that error and substituted my decision for that of the General Division.

[3] I have decided that the Claimant did not have “good cause” for her delay until August 23, 2023.

Overview

[4] F. M. is the Appellant. I will call her the Claimant because this application is about her claim for maternity and parental Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[5] The Claimant had a baby in May 2022. She was employed by the Federal Government, whose benefits included a top-up to EI for employees taking maternity or parental leave. The Claimant applied for the top-up benefit with the assistance of a Compensation Advisor working for her employer. She believed that the employer was ensuring that she met the all requirements for her top-up, including any requirements related to maternity and parental EI benefits.

[6] The employer paid the Claimant the top-up benefit during the period of her maternity and parental leave. After she was no longer receiving top up, the employer asked her to prove that she had applied for the EI maternity and parental benefits. The Claimant had not applied for EI benefits because she did not realize that she was required to do so.

[7] The employer’s request prompted the Claimant to apply for EI benefits in September 2023. She asked the Commission to antedate her request to the start of her leave.

[8] The Commission refused to antedate the claim because it did not accept that the Claimant had good cause for the delay. The Claimant asked it to reconsider, but it would not change its decision. The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed her appeal. She is now appealing to the Appeal Division.

[9] I am dismissing the appeal. The General Division made an error of fact, so I made the decision that it should have made. I have decided that the Claimant did not have good cause for her delay for the entire period of the delay.

[10] I found that she did have good cause since August 23, 2023, but I am afraid this does not help her to obtain benefits for the period of her leave.

Issues

[11] The issues in this appeal are concerned with errors of fact. They are as follows:

a) Did the General Division overlook relevant evidence when it considered mistakes reflected on the face of the Commission's decision letters?

b) Did the General Division misunderstand evidence by which it found that the Claimant acted with a lack of concern or negligence?

c) Did the General Division overlook the employer's role in causing the Claimant's confusion about the relationship between her EI benefits and her application for the employer's top-up benefits?

d) Did the General Division find that the Claimant's circumstances were not exceptional without regard to the cumulative effect of the Claimant's various stressful circumstances?

e) Did the General Division make an error of law by evaluating whether the Claimant had good cause for the delay when there was no policy justification for requiring her to justify her delay?

Analysis

General legal principles that apply to appeals to the Appeal Division

[12] 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.[1]

Commission's decision errors

[13] The Commission's initial decision was dated January 4, 2024. It denied the Claimant's application for benefits on the basis that she did not have hours of insurable employment in the qualifying period leading up to her September 2023 application. However, it omitted to address the Claimant's request that her claim be antedated so that she could receive her maternity and parental benefits. When the Commission addressed the antedate issue in its reconsideration decision, it made another mistake. It identified the initial decision as having the date of November 20, 2023.

[14] The Claimant asserts that the General Division ignored evidence of how these mistakes prejudiced her through delay and by adding to her confusion.

[15] The General Division did not make an error by finding that the Commission's mistakes did not prejudice the Claimant. It can only be concerned with those errors that potentially prejudice the Claimant's ability to obtain benefits. The General Division said that the Commission communicated its decision on antedate to the Claimant, despite the initial decision letter, so that she was able to request a reconsideration. It said the

[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* (DESDA).

error in the reconsideration decision was a clerical error, which likewise did not affect her appeal rights.

[16] The issue before the General Division was whether the Claimant was entitled to an antedate. The Commission's decision on her entitlement to an antedate depended on her ability to prove that she had good cause for her delay. The Commission's errors occurred after the period of her delay, so they could not possibly have caused or contributed to her delay in applying for benefits.

[17] Nor did the Commission's mistakes interfere with the Claimant's appeal rights or her ability to make her case before the General Division. She may have been confused by the Commission's errors for a time, but she identified the issue with which she disagreed and sought a reconsideration within the time allowed. When the reconsideration decision was unfavourable, she perfected an appeal application to the General Division.

Error in finding unconcern or negligence

[18] The General Division made an important error of fact when it found that the Claimant's actions were consistent with a lack of concern or negligence.

[19] This finding was based on its understanding that the Claimant knew she needed to apply for benefits after July 26, 2023, when a Compensation Advisor (Advisor) with her employer asked her for the EI Statement to reconcile with its top-up payments.[2]

[20] However, the General Division either misunderstood the Claimant's actions following the July 26, 2023, email, or it ignored evidence of her actions. The Claimant never stated that she knew she had to apply for EI once she received the July 26 email. In her submissions to the General Division, she stated that she was confused by her Advisor's July 26 request for her EI Statement. She said that it took some "back and forth" communication before she understood what they were asking.[3]

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[2] See paras 46 and 62 of the General Division decision.
[3] See GD2-11.

[21] She also testified that she did not have a chance to clarify the July 26 email request for EI statements, until she was contacted by an actual person on August 22, 2023.[4] She initially thought that her employer was asking for her employment pay stubs and that she could find the requested EI statements by creating a MyService account.[5] She created a MyService account but discovered no records of her claim. It wasn't until September 20, 2023, that she spoke with someone in her government department and learned that it expected her to apply for EI independently.[6]

[22] This was partially corroborated through evidence of her email exchange with her Advisor in which she sought to clarify the process after the July 2023 request.[7] In the first of those emails, she noted that her Advisor's previous messages were from a do-not-reply email address and that they did not explain how she could fulfil his request for the EI Statement.[8] Between August 22 and September 19, 2023, she and the Advisor emailed back and forth a few times to clarify her next steps. She applied for EI benefits on September 23, 2023.

[23] The evidence suggests that the Claimant did not immediately understand the July 23, 2023, communication to mean that she needed to apply for EI benefits directly. And her actions do not suggest that she was not concerned or negligent about pursuing her claim in the period between July 23 and the date of her application.

[24] This mistake is important to the General Division's findings. Even where claimants cannot antedate to a date as early as they would prefer, they may still be able to antedate their application for benefits as far back as they can show good cause for the delay. By finding that the Claimant did not have good cause in the most recent period (since July 23, 2023), the General Division excluded the possibility that the Claimant may have had good cause at any earlier time.

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[4] Listen to the audio recording of the General Division hearing at timestamp, 00:25:00.
[5] Listen to the audio recording of the General Division hearing at timestamp, 00:26:00.
[6] Listen to the audio recording of the General Division hearing at timestamp, 00:26:45.
[7] See GD2-88 to GD2-98.
[8] See GD2-96.

[25] Furthermore, the General Division's understanding that the Claimant knew she needed to apply as of July 23—but did not, and the manner in which it associated her delay with unconcern and negligence, may also have affected how it assessed her attitude generally. This finding may have affected whether it believed she acted diligently to verify that she had met the Commission's requirements for EI maternity and parental benefits, in the period prior to July 23.

[26] In other words, I accept that the General Division's error of fact may have affected a finding on which the General Division based its decision.

Failure to consider the employer's role in the delay

[27] The Claimant argued that the Commission made an error of fact because it failed to consider evidence about the employer's role in causing confusion and delay. She says that she acted reasonably in relying on the information she received from her employer.

[28] She described delays in the employer's processing of paperwork. Those delays meant that she had to complete all the documentation in the immediate aftermath of a difficult delivery. She said that the information from her employer was confusing, used inconsistent language, and that it did not distinguish between the SUB application process and the EI benefit application process. She said she submitted a copy of the employer's new information package to the General Division to highlight how the employer clarified its processes and application guidance.

[29] She also said that her employer continued to pay her the top-up, so she believed she had done all that she needed to do. She said the evidence showed that the employer should have cut off her top-up when it did not receive confirmation that it had all it required.

[30] The General Division found no evidence that the employer actually misinformed the Claimant.[9] To the contrary, it referred to evidence that the employer gave the Claimant correct information about her responsibility to apply for EI benefits.

[31] The General Division noted that the employer informed the Claimant that she needed to provide proof of eligibility for EI maternity/parental benefits, and told her she would receive that proof when she applied for EI maternity/parental benefits. It also noted the Claimant's testimony that she didn't do anything about getting the required proof.

[32] She testified that she thought the employer was asking for her "pay stubs."[10] However, there was nothing in the documentation from the employer that would explain why it would ask for her employment pay stubs, which would be requiring the Claimant to prove to the employer what the employer had already confirmed.

[33] The General Division also referred to how top-up benefits were described in the Collective Agreement. The Collective Agreement described the SUB Plan for maternity and parental leave, as a top-up to EI benefits.[11] It also set out the eligibility requirements for an employee to receive the SUB. One of those requirements was that the employee provide the employer with proof of their application for, and receipt of, EI maternity or parental benefits.

[34] I do not accept that the General Division ignored evidence of how her employer's information or action caused or contributed to her delay. The Claimant said that the General Division ignored how the employer misled the Claimant, but she did not point to any communication or document from the employer that was factually incorrect.

[35] The General Division acknowledged that the Claimant experienced difficulties dealing with her employer, her Human Resources department, and their processes. This acknowledgement presumably encompasses the Claimant's difficulties with

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[9] See para 50 of the General Division decision.
[10] See para 52 of the General Division decision. Also, listen to the audio recording of the General Division hearing at timestamp, 00:29:20.
[11] See GD2-40—GD2-45.

confusing communications and the fact the employer's delays meant that she had to deal with her application paperwork and adjust to a newborn baby at the same time. The General Division decision does not particularize this evidence, but it may still be presumed to have considered it. The courts have confirmed that the General Division is not required to refer to each and every piece of evidence in the record.[12]

[36] The Claimant says that the employer revised its SUB application process or communications since she applied. She says those changes are evident in the employer's June 2023 maternity/parental leave application form. She suggests that the revisions to the form represent an implicit admission that the employer's previous application process was unclear or inadequate.[13]

[37] The Claimant may be right that her employer revised its application form in recognition of the confusion caused by its original SUB application or process. However, this is not a necessary inference from the revised application form. More to the point, the existence of a new SUB application form or process does not help the Claimant to establish that she did not know, or could not have known, she needed to apply for EI benefits under the former process.

[38] The Claimant also says that the General Division did not consider how the continued top-up payments led her to believe everything was fine.

[39] It is clear that the General Division understood that the Claimant knew she was receiving top-up payments while on her maternity and parental leave. It understood that the top-up was based on the EI benefit she was supposed to receive. It understood that she was supposed to receive 93% of her total salary (top-up plus EI). It also understood the Claimant's evidence that she had not noticed she was not getting the amount she was supposed to receive.[14] The employer was not responsible for misleading her on or through any of these facts.

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[12] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.
[13] This new application is found at GD2-107.
[14] See paras 53–56 of the General Division decision.

[40] The Claimant points to the May 25, 2022, email as evidence that her employer had a practice or policy of cutting off top-off benefits after 8 weeks, if they did not receive the EI form described in the May 25 email. The General Division did not mention that the email included a warning that the SUB top-up would be cut off after eight weeks if the Claimant did not submit the EI form.

[41] Once again—the General Division may be presumed to have considered this evidence even though it did not refer to it. There was no need for the General Division to reference this particular piece of evidence.

[42] I say this because the email warning would have had little probative value. It would not have helped the Claimant to prove that her employer's actions contributed to the delay in her application for EI benefits.

[43] The email said only that the employer would break off payment of top-ups if it did not receive the Employee Statement—Employment Insurance Benefits Form (the "EI Form"). It did **not** say that the employer would break off top-up benefits if it was not satisfied that **all** of its SUB eligibility requirements had been met.

[44] The Claimant testified that she didn't know what the email meant by the EI Form.[15] But she did not investigate what it meant. The employer asked her about it in August 2023 and the Claimant said she thought the employer was seeking her pay stubs (although the employer was actually asking for her missing "**EI** pay stubs").[16] The May 25 email told the Claimant what she needed to do to meet the employer's requirements and it put the onus on her to send the employer the information that it required.

[45] She might have presumed—after eight days had lapsed—that the employer overlooked how she missed one of the requirements itemized in the email, or that it decided the EI Form was not important. However, the Claimant could not reasonably have understood the May 25 email as confirmation that she had met all the employers'

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[15] Listen to the audio recording of the General Division hearing at timestamp, 00:29:40.
[16] Listen to the audio recording of the General Division hearing at timestamp, 00:30:20, see also GD2-97.

SUB requirements, even though she continued to receive the top-up: She knew that she had not sent the employer the EI form.

[46] I accept that the Claimant assumed everything was fine because she continued to receive the top-up payments. However, there is nothing in the May 25 email to support that assumption. To the contrary, the May 25 email includes some other important information. Just above the warning that top-ups could be suspended, and on the same page, the email states that it is **up to the Claimant to forward proof of her eligibility for EI benefits** and that she would get that proof **when she applied for EI benefits**.

Failure to consider exceptional circumstances

[47] The Claimant argues that the General Division made an error of fact when it found she did not have "exceptional circumstances." She says that it did not understand the degree to which she was reliant on the Government of Canada as a foreign service diplomat posted overseas, the complications of her pregnancy and birth, or the cumulative effect of her many stressors.

[48] The General Division reviewed the Claimant's circumstances and her many stressors. It considered how she was living and working outside of Canada and dealing with local requirements in a foreign language. It acknowledged that there were time zone barriers to communicating with Canada, and that her own workplace imposed additional security measures. It noted that she did not have support from family, peers, or colleagues.

[49] The General Division recognized that the Claimant had a difficult delivery with surgery, that this was her first child, and that she and her spouse were mature parents. It understood that the problems with a first child could be greater outside of Canada. It also noted how she said she was busy with no time for personal administration.

[50] The General Division was aware that the Claimant was experiencing all of these things at the same time or in the same timeframe, as she was dealing with her Advisor and the SUB application process.

[51] In my view, the General Division's conclusion that her circumstances were not exceptional is comprehensive of all of her circumstances. There was no specific evidence that her various circumstances combined in some synergistic fashion, so the General Division could not conclude that there was something exceptional about the "cumulative effect" of her circumstances without speculating.

[52] The General Division found that there were no exceptional circumstances that would exempt the Claimant from taking reasonably prompt steps to determine her entitlement to benefits. It applied direction from the Federal Court of Appeal which says that a claimant must take reasonably prompt steps to find out about their rights and obligations under the *Employment Insurance Act* (EI Act), unless they can show that there are exceptional circumstances why they did not do so. It noted that exceptional circumstances are circumstances that prevent claimants from applying for benefits early on or make it exceptionally difficult to do so.[17]

[53] A number of Federal Court of Appeal decisions have considered the requirement that a claimant take reasonably prompt steps to find out their rights and obligations. None of those decisions stipulate that a claimant's steps necessarily involve contacting the Commission directly. In *Bryce,* the Court said that "[a]n obvious place to enquire would be the Commission."[18]

[54] In practice, *Bryce's* assertion that the Commission is an obvious place to seek information means that the obvious place is Service Canada. Service Canada acts as the physical and online channel for claimants to access government services, and as the Commission's agent relating to EI benefits.

[55] However, *Bryce* did not assert that the Commission was the only source that would satisfy the requirement. Another "obvious" place for the Claimant to seek information would have been her own employer, the Government of Canada. In *Mendoza*, the Court said that "the respondent was obligated to be prompt in

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[17] See para 64–66 of the General Division decision, citing *Canada (Attorney General) v Somwaru*, 2010 FCA 336.
[18] *Canada (Attorney General) v Bryce*, 2008 FCA 118.

determining, with the Commission **or reliable sources,** whether he was entitled to such benefits."[19]

[56] In this case, the Claimant was working with a federal government Compensation Advisor to satisfy the employer's requirements for its SUB Plan for a maternity and parental leave. According to the Collective agreement, one of the eligibility requirements for SUB is that employee applicants be approved by EI for maternity or parental benefits, since the SUB plan is a top-up to EI benefits.[20] The Claimant may well have understood that she was being advised and assisted with all aspects of her eligibility for the SUB top-up.

[57] The Claimant suggests that the General Division made an error by not recognizing the uniqueness of her position as a federal government employee posted overseas, and on her dependence on her employer for information, support, and assistance. Because she was employed by the federal government, she believed that her application for SUB benefits and her EI benefit application were a single process. She believed that she could rely on her Compensation Advisor to provide accurate and personalized information on her SUB application. She believed that her employer could also act on behalf of the Commission, or act to ensure she met the Commission's requirements.

[58] The General Division explained that the Claimant, "[had] to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could."[21] I understand from this that that the General Division took into account the Claimant's engagement with her employer, and that it did not restrict itself to considering whether she acted reasonably in her dealings with Service Canada or the Commission.[22]

[59] I agree that the Claimant delayed her application under unusual circumstances. I do not agree that the General Division failed to recognize this.

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[19] *Canada (Attorney General) v Mendoza,* 2021 FCA 36.
[20] See GD2-40—GD2-45.
[21] See para 27 of the General Division decision.
[22] See also para 58 of the General Division decision.

[60] The General Division recognized the particular challenges posed by living and working outside of Canada. It also acknowledged that the Claimant was employed by the Government of Canada, to which the Commission also answers.

[61] The General Division found that the Claimant's circumstances were not exceptional because it would not have been exceptionally difficult for her to learn about her rights and responsibilities related to her EI benefits. The Claimant says she believed that applying for EI benefits and applying for the SUB top-up to those benefits was a single process. Even so, the General Division said that she could still have taken steps to confirm with her employer that she understood that correctly. It noted that she did not do anything in response to the employer's initial request for the EI Form in the May 25 email. The General Division also said that she could have accessed the Service Canada website and contacted their toll-free number, despite her residence out of Canada and the time zone differences.

[62] The Claimant has not pointed to any evidence that the General Division ignored, and she has not shown that it misunderstood the evidence. Instead, she seems to be disagreeing with how the General Division weighed the evidence of her circumstances or with its conclusion that her circumstances were not exceptional.

[63] However, the Appeal Division can only consider whether the General Division ignored or misunderstood evidence that is relevant to its key findings, or whether its findings were not rationally connected to the evidence. Even if I would have reached a different decision on the facts, the courts have said that it is not the place of the Appeal Division to re-weigh or reevaluate the evidence.[23]

[64] Furthermore, when the General Division concludes that the claimant did not act as a "reasonably prudent person" or that her circumstances were not "exceptional," it is applying settled law to the facts of the case. This is what is known as a question of

[23] See, for example: *Tracey v Canada (Attorney General),* 2015 FC 1300; *Hideq v Canada (Attorney General)*, 2017 FC 439; *Hussein v Canada (Attorney General)*, 2016 FC 1417.

mixed fact and law. The courts have told the Appeal Division that it has no authority to consider questions of mixed fact and law.[24]

Failure to consider policy justification

[65] The Claimant argued in the alternative that she should not have to satisfy the "good cause" test as a matter of law.

[66] The Claimant cited the *Beaudin* decision in support of her argument.[25] The *Beaudin* decision found that a claimant was not entitled to an antedate of their claim for regular benefits. In its reasons, it noted the policy justification for the "good cause" requirement, and for a strict interpretation of it. The Claimant argued that the policy justification in the *Beaudin* decision does not apply to maternity or parental benefits. Therefore, she suggests that *Beaudin* implies that a claimant such as herself should not have to show "good cause."

[67] I do not accept that the General Division made an error of law by holding her to the "good cause" test. *Beaudin* does not authorize the Commission to waive or relax the "good cause" requirement in cases where the policy justification would be less compelling or even inapplicable.

[68] The requirement that claimants show good cause for the delay throughout the period of the delay is plainly written into the EI Act.[26] The EI Act does not exempt antedates of maternity and parental benefits from the "good cause" requirement. When the Federal Court of Appeal held that the "good cause duty of care is both demanding and strict,"[27] it did carve out an exception for maternity and parental benefit antedates.

[69] The General Division must apply the law as it is written, and as it is interpreted by the courts. It is not required to look behind the law to its policy justification.

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[24] *Quadir v Canada (Attorney General)*, 2018 FCA 21.
[25] *Canada (Attorney General) v Beaudin*, A-341-04.
[26] See section 10(4) of the EI Act.
[27] *Canada (Attorney General) v Albrecht*, [1985] 1 F.C. 710 (C.A.), *Canada (Attorney General) v Kaler,* 2011 FCA 266.

Summary of errors

[70] I have found that the General Division made an error of fact when it found that the Claimant's actions were consistent with a lack of concern or negligence. It was mistaken about what the Claimant understood from the July 26, 2023, email, and it did not consider the efforts she made to clarify the letter. Therefore, I did not agree with the basis on which the General Division found that the Claimant's actions were consistent with a lack of concern or negligence

[71] I have otherwise found no error in the General Division's decision.

Remedy

[72] Because I have found an error, I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.[28]

[73] Both parties have recommended that I make the decision the General Division should have made. I accept that recommendation. There is evidence on every issue and to support every necessary finding, so the record is complete.

[74] I will substitute my decision for that of the General Division. I must correct the General Division's error and make the decision the General division should have made—if not for its error.

My decision

[75] As discussed, the EI Act says that a claimant may antedate their claim to a date earlier than the date of their application if they can show that they had good cause for the entire period of the delay.

– Use of "good cause" test

[76] In one of her arguments, the Claimant said that she should not have to show good cause because the policy reasons for the requirement do not apply to claimants

[28] See section 59(1) of the DESDA.

who are seeking maternity or parental benefits. She says such claimants have no need to prove their availability for work, so a late application does not make it more difficult for the Commission to establish a claimant's entitlement to benefits.

[77] I appreciate her argument. I agree that there is little "policy justification" for taking a strict approach to the application of the test for good cause in circumstances such as hers.

[78] However, I have already found the General Division did not make an error by requiring her to demonstrate "good cause" for her delay. I have no authority to refuse to apply the law because I do not think it has a satisfactory policy justification.

– Correcting for the General Division's error

[79] I decided that the General Division made an error based on a mistake about what the Claimant understood from the July 26, 2023, email, and because it did not consider the efforts that she made to clarify the letter.

[80] A claimant seeking an antedate must have good cause through the period of the delay. Where they initially delay their application without good cause, but their circumstances change in a way that justifies additional delay, they may antedate their claim to when they can first show they had good cause. Claimants can never obtain an antedate to a date that is earlier than the most recent period in which they can establish good cause.

[81] Having said that, the Commission can only antedate a claim to some earlier date if a claimant would otherwise have qualified.[29] This would require the claimant to have sufficient hours to qualify within a "qualifying period" ending just prior to the antedate date. [30]

[29] See section 10(4) of the EI Act.
[30] See sections 7 and 8 of the EI Act.

Period from August 23, 2023, forward.

[82] I accept that the Claimant had good cause for the delay, but only from August 23, 2023, forward.

[83] I find that the Claimant relied on her employer to guide her through the SUB process and to ensure its requirements were met. I also find that the employer offered the SUB as a top-up to EI benefits, and that the application for EI benefits was one of the requirements for the SUB process. I am basing these findings on the terms of the Collective Agreement and the correspondence between the Claimant and her Advisor, and on the Employee Statement—Employment Insurance Benefits form. All of these documents reference EI benefits in the context of satisfying the employer's SUB process.

[84] Furthermore, I accept that it was reasonable for the Claimant to rely on the advice and guidance of her Government of Canada Compensation Advisor. I accept that the Advisor was a reliable source of information about EI benefits.

[85] The Claimant emailed her Advisor on August 23, 2023, seeking to clarify her next steps and ultimately to pursue her EI application. The evidence supports a finding that the Claimant engaged with her Advisor for this purpose from August 23, 2023, forward. I understand that the nature of the July 23, 2023, email, was such that she could not respond to it directly. But there is no evidence she tried to do anything until after her Advisor followed up the July 23 email with his August 22 email.

[86] Unfortunately, the fact that I have decided the Claimant had good cause since August 23, 2023, will not assist her. The January 4, 2024, decision says that she had zero hours of insurable employment between September 25, 2022, and September 23, 2023 (the qualifying period). Since I have found good cause since August 23, 2023, her qualifying period would begin about a month earlier in August 2022. The Claimant was on leave at that time but, even if she had worked full-time hours in that additional month, I doubt that she could have accumulated sufficient hours to qualify for maternity and parental benefits by extending her qualifying period by one month.

Period prior to August 23, 2023

[87] I have found that the Claimant had good cause for the delay from August 23, 2023, until her application. However, the Claimant did **not** have good cause in any period prior to August 23, 2023.

[88] The Claimant says the documents for her SUB application were confusing and that different terms were used to describe the same thing. She says that she believed her SUB application and the EI application were all one process. She was living in a foreign country, was uniquely dependent on her employer for guidance, and was distracted by the demands of a new baby.

[89] Because of these various circumstances, the Claimant says that she relied on the Compensation Advisor and that she followed his directions as she understood them.

[90] As I have said already, I have no doubt that she relied on her Advisor. However, since she was relying on her Advisor so exclusively, she needed to be especially careful to attend to what her Advisor was telling her.

[91] The Claimant's Advisor set out the "next steps" for the claimant to obtain top-ups in its May 25, 2022, email. Among the steps described, was a requirement that the Claimant forward proof of her eligibility for EI maternity/paternity benefits. It told her she would receive this proof, "**when you** (meaning the Claimant) **apply with EI maternity/parental benefits**."[31]

[92] The email also told the Claimant that she needed to send the Employee Statement—Employment Insurance Benefits form (EI form). The email warned that her SUB would be suspended if she did not forward this form to the employer. The email indicates that the form was sent to the Claimant as an attachment.[32] The Claimant did not specifically deny that the form was attached, but she testified that she did not know what it was. She said she did not find out until about a year later.

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[31] See GD2-74.
[32] See GD2-71.

[93] An unsigned copy of the EI Form is in the General Division record.[33] It is completed with the Claimant's personal information and dated June 1, 2022. This is the form referred to in the May 25 email. Based on the Claimant's testimony that she was unaware of the form or had not recognized it, I will presume that it was backdated or completed by someone else for the Claimant

[94] The EI Form required the signatory to attest as follows: "I agree to provide my Compensation Advisor with proof of benefits I have received from the EI to justify the payments that will be made by my employer."

[95] The Claimant acknowledged that she had not followed up to question the EI Form or to clarify the requirements described in the May 25, email. Had she followed the instructions to complete the form, she might have read it together with the other instructions in the email and understood her responsibility to apply for the EI benefits. If she could not find or understand the EI Form, she could have asked. I expect that her Advisor could have clarified this immediately or referred her to Service Canada to follow up.

[96] In addition to the SUB application documentation from the employer, the Claimant also had access to her Collective Agreement, or she could have accessed it. The Collective Agreement governs eligibility for the SUB. It states that the employee must apply for EI benefits in order to obtain that SUB top-up.[34]

[97] I appreciate that the Claimant presumed all was well because she was receiving payments from the employer. However, she had not applied for EI benefits in the way described in her Collective Agreement. According to the Collective Agreement, she was entitled to 93% of her salary in combined EI benefits and top-up—**if she applied for EI**. The Claimant was receiving payments, but she did not check that she was receiving her full entitlement to the combined leave benefits.

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[33] See GD2-124.
[34] See GD2-40 at para 26.02(a)(i) and GD2-42 at para 27.02 (a)(ii).

[98] The Claimant did not act as a reasonable and prudent person would have acted in her circumstances. The SUB documents or process may have been confusing, but there was enough in her Collective Agreement, the emails from her Compensation Advisor, and the SUB forms and other documentation to suggest she needed to at least ask whether she needed to do anything else to satisfy the Commission's requirements for EI maternity and parental benefits.

[99] The Claimant ignored, or failed to clarify, information about her EI benefits by which she might have learned about her obligation to apply. She did not follow up with her Advisor even when she knew that she did not understand the Advisor's directions. She cannot assert that her oversight was due to her dependence on her Advisor's guidance when she knowingly ignored the guidance of her Advisor or employer.

[100] The Claimant did not have good cause for the delay until August 23, 2023. August 23, 2023, is the first time she engaged with her Advisor to determine her rights and responsibilities under the EI Act.

[101] The Claimant's delay in applying for maternity and parental EI benefits means that she is not entitled to an antedate, so she does not qualify for the EI benefits. I recognize that she may also have to repay the top-up benefits she received from her employer. I am sympathetic to her circumstances, but I cannot find that she had good cause for the entire period of her delay.

Conclusion

[102] The appeal is dismissed. The General Division made an error of fact, but it does not change the decision that she is not entitled to an antedate.

[103] I have corrected the error and substituted my decision for that of the General Division. The Claimant did not have good cause for the delay until August 23, 2023.

Stephen Bergen
Member, Appeal Division