

An appeal

- by -

Andrew B. Clark
(the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: James F. Maxwell

FILE No.: 2019/5

DATE OF DECISION: April 10, 2019

DECISION

FACTS

1. The Appellant herein, Andrew B. Clark (the “Appellant”), filed a complaint with the Employment Standards Branch on September 5, 2018. The complaint alleged that the Appellant’s employment with Wadlegger Logging & Construction Ltd. (“Wadlegger”) had been terminated but that Wadlegger had failed to comply with the provisions of the *Employment Standards Act* (the “ESA”) requiring Wadlegger to pay the Appellant compensation for length of service.
2. On November 23, 2018, a delegate of the Director of Employment Standards (the “Director”) issued a determination (the “Determination”) pursuant to sections 74 and 76 of the *ESA*, in which the Director concluded that the Appellant had failed to file his complaint within the time limits prescribed by the *ESA*, and that there was no compelling reason to accept the complaint.
3. On January 22, 2019, the Appellant filed an appeal of the Determination.
4. The deadline for the filing of an appeal of the Determination was December 31, 2018.
5. The Appeal Form filed by the Appellant affords an appellant the opportunity to request an extension of time to the statutory appeal period. As part of his appeal, the Appellant did not request an extension to the statutory appeal period and did not provide any explanation for filing the appeal after the expiry of the statutory appeal period.
6. Having reviewed the Determination and the Appellant’s submissions filed with the appeal, I conclude that this appeal must be dismissed pursuant to section 114(1)(b) of the *ESA*.

ISSUE

7. Is the Appellant entitled to an extension to the time for filing an appeal of the Determination?

ANALYSIS

8. The Legislature has established a limitation on the time period for appealing a Determination issued pursuant to section 79 of the *ESA*. The relevant time periods are set out in section 112(3) of the *ESA*. A person served with a Determination has 30 days from the date of service of a Determination in which to file an appeal if, as in this case, the Determination was served by registered mail. In the case of service by registered mail, section 122 of the *ESA* provides that service is deemed effective 8 days after the Determination was deposited in a Canada Post Office.
9. In the present case, the Director sent the Determination by registered mail on November 23, 2018. Service was deemed effective, pursuant to the *ESA*, on December 1, 2018. The deadline for filing the appeal was December 31, 2018. This was clearly set out in the material accompanying the Determination.

10. The Appellant submitted his appeal on January 22, 2019, more than three weeks after the deadline for doing so. While the Appellant was careful to complete each section of the Appeal Form, including the section asking him to identify the grounds of his appeal (section 3 of the Appeal Form), the section asking him to identify his desired remedy (section 4), and the section asking him to confirm that he was supplying all of the required documents (section 7), the Appellant did not check the box at section 6 of the Appeal Form, by which he would have requested an extension to the statutory appeal period. In addition, the Appellant did not supply any explanation for failing to request an appeal within the statutory time limit, as required by section 6 of the Appeal Form.
11. In *Re: Gary Tam* (BC EST # D093/11), the Tribunal acknowledged that it has a discretion to extend the time limit for filing an appeal, but noted that the burden falls upon the appellant to demonstrate that there is a compelling reason to grant an extension:
- The *Act* allows the appeal period to be extended on application to the Tribunal. In *Metty M. Tang*, BC EST # D211/96, the Tribunal expressed the approach it has consistently followed in considering requests to extend time limits for filing an appeal:
- Section 109(1) (b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.
12. In the present case, not only has the Appellant not requested an extension to the statutory time limit for filing the Appeal, but he has not satisfied the burden upon him to provide compelling reasons why an extension should be granted. In the circumstances, I decline to exercise my discretion to grant an extension.
13. Section 114(1)(b) of the *ESA* provides that I may dismiss an appeal if it was not filed within the applicable time limit.

ORDER

14. I dismiss this appeal under section 114(1)(b) of the *ESA* and confirm the Determination under section 115(1)(a).

James F. Maxwell
Member
Employment Standards Tribunal