

Citation: Allan Hao also known as Guoling Hao (Re)  
2020 BCEST 21

An Application for Reconsideration

- by -

Allan Hao also known as Guoling Hao  
("Mr. Hao")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** David B. Stevenson

**FILE No.:** 2020/026

**DATE OF DECISION:** March 13, 2020

## DECISION

### SUBMISSIONS

Allan Hao also known as Guoling Hao on his own behalf as an Officer of Greenwood HVAC Services Ltd.

### OVERVIEW

1. Allan Hao also known as Guoling Hao (“Mr. Hao”) seeks reconsideration of a decision of the Tribunal, 2019 BCEST 121 (the “original decision”), dated November 19, 2019.
2. The original decision considered an appeal of a Determination issued by Carrie H. Manarin, a delegate of the Director of Employment Standards (the “Director”), on April 18, 2019, which found Mr. Hao was an Officer of Greenwood HVAC Services Ltd. (“Greenwood HVAC”) at the time wages of three employees of Greenwood HVAC (the “Complainants”) were earned or should have been paid and under section 96 of the *ESA*, was personally liable to the Complainants for wages in the amount of \$6,753.75.
3. The appeal of the Determination was filed by Mr. Hao on the ground that new evidence had become available that was not available when the Determination was being made.
4. The Tribunal Member making the original decision dismissed the appeal under section 114 of the *ESA* finding the evidence that was advanced as being new evidence did not meet the conditions for accepting and considering it, that it could not, in any event, affect the finding in the Determination that Mr. Hao was an Officer of Greenwood HVAC and was liable for wages under section 96 of the *ESA*, that some of the evidence and arguments made by Mr. Hao had no relevance to the finding of his personal liability under section 96, and that in all other respects the Director made no reviewable error in making the finding that he was personally liable for wages under section 96 of the *ESA*.
5. A Reconsideration Application Form was delivered to the Tribunal on February 10, 2020, more than seven weeks past the time period set out in section 116 of the *ESA* for making a reconsideration application.
6. Included with the reconsideration application, Mr. Hao has filed a request to extend the statutory reconsideration period. The reason for the requested extension is that “new evidence has become available after I filed my first appeal on Sep. 20, 2019” and he didn’t understand the appeal process.

### ISSUE

7. There are two issues being addressed in this decision: first, whether the Tribunal should extend the time period for filing the application for reconsideration; and second, if the first request is granted, whether reconsideration is warranted. The two issues are related in the sense that the absence of a case that warrants reconsideration will operate against an extension of the time period.

8. In respect of the second issue, the Tribunal has discretionary authority to allow an application for reconsideration and in doing so may, as suggested above, assess the merits of the application before imposing the time and expense of responding on the other parties.

## ARGUMENT

9. The submission on the application contains several threads, which I shall attempt to summarize.
10. First, Mr. Hao says there is new evidence, which comprises events relating to steps taken by the Director subsequent to the disposition of Mr. Hao's appeal, to file the Determination in BC Supreme Court and enforce it through processes available to the Director, a letter dated January 30, 2020, from the office administrator for LacMac Investments Inc. – which was a company involved in an attempted disposition of Greenwood HVAC in early 2018 – suggesting the wages the Director found owing to one of the Complainants might be incorrect, and a letter dated December 12, 2019, from the office administrator of Greenwood HVAC speaking to her recollection of the employment of one of the Complainants.
11. Based on the above “new evidence”, Mr. Hao argues against the wage amounts found owing to all of the Complainants, questioning the Director's findings on the wage rates, the hours of work, and the total of wages found owing to the Complainants.
12. I will note at this point that during the complaint process, no Employer Records were provided to the Director; Mr. Hao said he had no payroll records covering the period of the wage claims. Mr. Hao disputed the claim of one of the Complainants but, although provided with the opportunity to do so, made no written response on any of the claims made by the Complainants or to the calculations made by the Director of wages owing to each Complainant.
13. In respect of the request by Mr. Hao to extend the time period for filing for reconsideration, he asks for an extension based on the “new evidence” and because he didn't understand the appeal process.

## ANALYSIS

14. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally. Section 116 reads:
- 116 (1) On an application under subsection (2) or on its own motion, the tribunal may*
- (a) reconsider any order or decision of the tribunal, and*
- (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.*
- (2) The director or a person served with an order or a decision of the tribunal may make an application under this section.*
- (2.1) The application may not be made more than 30 days after the date of the order or decision.*
- (2.2) The tribunal may not reconsider an order or decision on the tribunal's own motion more than 30 days after the date of the decision or order.*

- (3) *An application may be made only once with respect to the same order or decision.*
- (4) *The director and a person served with an order or a decision of the tribunal are parties to a reconsideration of the order or decision.*

15. The above provision includes statutory time limits for reconsideration applications. The Tribunal has decided the approach to extensions of the reconsideration time period in a manner consistent with the approach taken to extensions of the statutory time period for appeals. In *Serendipity Winery Ltd.*, BC EST # RD108/15, the Tribunal stated:

I see no reason to deviate from the criteria listed above [in *Re Niemisto*, BC EST # D099/96] when considering requests for an extension of the time period for filing reconsideration applications. However, the question of whether there is a strong *prima facie* case must take into account that the Tribunal's discretionary authority to reconsider under section 116 of the *Act* is exercised with restraint – see *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01 – and must remain consistent with the approach taken by the Tribunal in deciding whether reconsideration is warranted. (at para 21)

16. In respect to deciding whether reconsideration is warranted, generally, the Tribunal has developed and applied a principled approach to the exercise of its discretion. The rationale for this approach is grounded in the language and purposes of the *ESA*. One of the purposes of the *ESA*, found in section 2(d), is “to provide fair and efficient procedures for resolving disputes over the application and interpretation” of its provisions. Another stated purpose, found in section 2(b), is to “promote the fair treatment of employees and employers”. The approach is fully described in *Milan Holdings Inc.*, BC EST #D313/98 (Reconsideration of BC EST # D559/97). In *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, *supra*, the Tribunal explained the reasons for its restrained approach:

. . . the Act creates a legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute.

There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative process subject to a strong privative clause and a presumption of regularity, the “winner” not be deprived of the benefit of an adjudicator’s decision without good reason. A third is to avoid the spectre of a Tribunal process skewed in favour of persons with greater resources, who are able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

17. Delay in filing for reconsideration will mitigate against, and likely lead to a denial of, an application but will typically include an assessment of the merits of the original decision.

18. The focus of a reconsideration application is, generally, the correctness of the original decision.

19. In deciding whether to reconsider, the Tribunal considers the nature of the issue and its importance both to the parties and the system generally.

20. Applying the above considerations, I am not persuaded reconsideration is warranted in this case.

21. The application is well out of time and I find the reasons for seeking the extension of time do not satisfy the criteria identified in *Re Niemisto, supra*.
22. Even if were to grant an extension of the reconsideration appeal period, I would still reach the conclusion this application does not warrant reconsideration. I am completely satisfied, based on an assessment of the original decision and the material before the Tribunal Member in the appeal, that there was no error made in the original decision.
23. For the same reasons provided by the Tribunal Member in the original decision, I find the Determination to be correct.
24. To reiterate the conclusion in the original decision: there was nothing in the appeal that demonstrated the Director was wrong in finding Mr. Hao was personally liable under section 96 of the *ESA*, as an Officer of Greenwood HVAC during the period the Complainants' wages were earned and should have been paid, for the amount of the Determination. Mr. Hao says in his reconsideration application submission that, "I do not dispute section 96 that I am liable (I truly understand it) . . ."
25. There is nothing in this application that calls into question the correctness of either the Determination or the original decision. Both are entirely in accord with the provisions of the *ESA* relating to the personal liability of persons who are recorded as an officer of a corporation found liable to employees for wages under the *ESA* and are consistent with how those provisions have been interpreted and applied in cases such as this.
26. As for the Director's calculations of the wages owed, there are two insurmountable problems to Mr. Hao's challenge.
27. First, the calculations are findings of fact based on evidence that was before the Director during the complaint process. The Tribunal Member making the original decision would not have had the authority to set aside those findings without being shown there was an error of law in them. Mr. Hao did not raise error of law as a ground of appeal, did not mount any argument in his appeal that the wage calculations were wrong (although he was given an opportunity to do so) and, in any event, there is nothing in any of the material on the file that would suggest the Director made any error in calculating wages owing to the Complainants.
28. Second, it is simply too late to be mounting such an argument at this time. As noted above, the reconsideration process focusses on the correctness of the original decision. As I have indicated immediately above, the submission challenging the wage calculations is new; it was not raised in the appeal and, logically, it cannot be said there was an error in the original decision when the Tribunal Member making it had no chance to address that argument.
29. On a personal note, I can sympathize with the circumstances in which Mr. Hao finds himself, having believed he had sold the business of Greenwood HVAC and would have no continuing obligations relating to its operation, but my obligation here is to apply the provisions of the *ESA* and doing so am unable to find any basis for accepting his application for reconsideration.

30. In sum, the reconsideration is out of time and is denied for that reason. In any event, it has no merit. Applying principles for extending the reconsideration time period found in the *ESA* and consistent with the Tribunal's approach to applications for reconsideration, the request is denied and the application dismissed.

**ORDER**

31. Pursuant to section 116 of the *ESA*, the original decision, 2019 BCEST 121, is confirmed.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**