Citation: Armand Norman (Re)
2020 BCEST 5

An Application for Reconsideration

- by -

Armand Norman
("the Applicant")

- 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: Jacquie de Aguayo

FILE No.: 2019/189

DATE OF DECISION: January 28, 2020

DECISION

SUBMISSIONS

Armand Norman — on her own behalf

OVERVIEW

1. The Applicant applies for reconsideration under section 116 of the *Employment Standards Act* (the "*ESA*") of Tribunal Decision Number 2019 BCEST 117 (the "Appeal Decision") rendered by Member Carol L. Roberts (the "Member") on November 5, 2019.

2. The Appeal Decision dismisses the Applicant's appeal of a determination (the "Determination") made by a delegate of the Director of Employment Standards (the "Delegate"), dated August 30, 2019. The Determination dismisses complaints filed by the Applicant under the *ESA* on the basis that she was not an employee of the Canadian Diabetes Association ("Diabetes Canada") (Appeal Decision, para. 2).

3. The Appeal Decision first summarizes the background facts and the Tribunal's approach on appeal at paragraphs 5 – 14. With respect to errors of law, the Member finds none were identified and, in any event, the Determination was rationally based on the evidence (para. 15). The Member states there is "no information in the complaint that the [Applicant] actually did work or volunteer for Diabetes Canada, even though she also indicated that she worked seven days per week, 24 hours per day" (para. 17).

4. The Appeal Decision also finds there was no denial of natural justice as the Applicant "had every opportunity to present her complaint as well as submit documentation supporting her allegations" (para. 19).

5. With respect to new evidence, the Appeal Decision concludes that the materials on which the Applicant sought to rely were not relevant to the issue on the appeal – being whether or not she was an employee of Diabetes Canada (para. 22). In the alternative, even if it were properly new evidence, the Member finds the materials would not have led the Delegate to a different conclusion on that issue (para. 23).

6. For the reasons set out, the Appeal Decision finds that there was no reasonable prospect that the appeal would succeed and dismisses it pursuant to section 114 of the *ESA*.

GROUNDS FOR RECONSIDERATION

7. The application for reconsideration is brief but contains sweeping allegations. The Applicant alleges she suffered injuries resulting from her "involuntary employment with Diabetes Canada from 1993-2019", refers to employment at a Canadian Forces Base, and alleges harassment and unlawful conduct against a range of entities, including Diabetes Canada, from 1966-2019. The Applicant further states that there is "much evidence" to support her complaints including what she characterizes as criminally active fraud syndicates.

8. Whether or not to grant an application for reconsideration is discretionary and the Tribunal exercises its reconsideration power in limited circumstances: *Milan Holdings Inc. (Re)*, BC EST # D313/98 ("*Milan Holdings*"). The Tribunal's approach is to first assess whether an application for reconsideration raises an arguable case of sufficient merit. If it does not, the Tribunal will dismiss the application. The reasons for this two-step approach are set out in *Milan Holdings* as follows:

> The primary factor weighing in favour of reconsideration is whether the applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases. At this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration. This analysis was summarized in previous Tribunal decisions by requiring an applicant for reconsideration to raise "a serious mistake in applying the law": *Zoltan Kiss, supra*. As noted in previous decisions, "The parties to an appeal, having incurred the expense of preparing for and presenting their case, should not be deprived of the benefits of the Tribunal's decision or order in the absence of some compelling reasons": *Khalsa Diwan Society* (BCEST #D199/96, reconsideration of BCEST# D114/96). (p. 7)

9. As such, I will first consider whether the Applicant has raised an arguable case of sufficient merit. In doing so, like the Member below, I have taken into account that the Applicant is self-represented and does not have legal training. I have considered the grounds for reconsideration in a large and liberal manner and will give the Applicant the benefit of any doubt with respect to whether the application passes the first stage of the *Milan Holdings* test: *Triple S Transmission Inc.*, BC EST # D141/03, *Jordan Enterprises Ltd.*, BC EST # RD154/16 (Reconsideration of BC EST # D114/16).

10. Applying that approach, I find the Applicant has not raised an arguable case of sufficient merit that warrants reconsideration in the present case: *Milan Holdings*. Specifically, having regard to the Appeal Decision and the record of material before me, I find the Appeal Decision correctly upheld the Delegate's finding that the Applicant was not an employee of Diabetes Canada and, as such, the *ESA* did not apply.

11. Accordingly, for the reasons given, the application for reconsideration is dismissed.

Jacquie de Aguayo
Chair
Employment Standards Tribunal