



Citation: Raed Eid (Re)  
2020 BCEST 84

An appeal

- by -

Raed Eid  
(the “Applicant”)

- of a Determination issued by -

The Director of Employment Standards

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

**PANEL:** Carol L. Roberts

**FILE No.:** 2020/100

**DATE OF DECISION:** July 9, 2020

## DECISION

### SUBMISSIONS

Raed Eid on his own behalf

### OVERVIEW

1. This is an application by Raed Eid (the “Applicant”) for a reconsideration of Tribunal Decision 2020 BCEST 58 (the “Original Decision”), issued by the Tribunal on June 2, 2020.
2. The Applicant worked as a pharmacist for Bijan Pharmacy Inc. carrying on business as Shoppers Drug Mart 224 (the “Employer”) for two days in December 2018 at a rate of \$50 per hour and was paid \$800. He also worked for the Employer for three days in January 2019 at an hourly rate of \$55 and was paid \$1,265 plus \$60 for fuel expenses.
3. On June 27, 2019, the Applicant filed a complaint with the Employment Standards Branch alleging that the Employer had contravened the *Employment Standards Act*, R.S.B.C. 1996 c. 113 (“*ESA*”) by failing to make statutory deductions from the total pay and failing to issue wage statements. During the complaint process, the Employer submitted pay statements to the Director. Those were provided to the Applicant and the Director determined that, having done so, the statutory requirement outlined in section 27(1)(g) of the *ESA* had been satisfied and that this aspect of the complaint had been resolved.
4. The Director found there was no provision in the *ESA* requiring an employer to make statutory deductions for Canada Pension, Employment Insurance and Income Tax, and that no further action would be taken with respect to this aspect of his complaint.
5. The Director exercised the discretion provided in section 76(3)(b) and (i) and ceased investigating the complaint.
6. The Applicant appealed the Determination on the grounds that the Director had erred in law and had failed to comply with principles of natural justice.
7. The Tribunal Member decided that the appeal was appropriate for consideration under section 114 of the *ESA* and assessed whether the appeal should be dismissed or allowed to proceed. The Member ultimately concluded that the appeal had no merit, was frivolous and an abuse of process, and that it had no reasonable prospect of succeeding.
8. The Member noted that the Applicant advanced, for the first time on appeal, a claim for travel time that was not included in his initial complaint or advanced during the complaint process. The Member found that not only had the Applicant not raised the issue of travel expenses with the Director during the investigation, he had no right to claim any expenses under the *ESA* in any event.

9. The Member stated

The sum and substance of the Determination is that those aspects of the complaint which were governed by provisions in the *ESA* were resolved through the complaint process, that no contravention of the *ESA* had been found and no requirement had been imposed, that the purposes of the *ESA* did not justify administrative penalties as a punitive measure on matters which had been resolved without a determination and the imposition of a requirement under section 79 of the *ESA*, that the Director had discretion in the circumstances to not find a contravention and had discretion to cease investigation of the complaint. (para. 27)

[The Applicant] has failed to meaningfully address any of the above matters and has failed to show there was an error of law by the Director on any of them. [the Applicant] contends that the Director failed to properly investigate his complaint but has done nothing in the appeal that relates that contention to any part of the definition of “error of law.” (para. 28)

10. The Member noted that an appeal was an error correction process, and that the burden of demonstrating an error rested with the Applicant. The Member concluded that the Applicant had not demonstrated an error in the Determination.

11. The Member also found that the record clearly demonstrated that the Applicant was afforded the procedural rights reflected in section 77 of the *ESA* and captured by natural justice principles.

12. The Member confirmed the Determination.

## ISSUE

13. There are two issues on reconsideration:

1. Does this request meet the threshold established by the Tribunal for reconsidering a decision?
2. If so, should the decision be cancelled or varied or sent back to the Member?

## ARGUMENT

14. It is difficult to discern the basis for the Applicant’s reconsideration application.

15. In his submission, the Applicant refers to the travel costs, which he states are the Employer’s business costs, and which are referred to in the *ESA*.

16. The Applicant contends that documents he submitted to the delegate in support of his complaint were invoices rather than pay statements, as they were characterized by the Member.

17. Finally, the Applicant says that “I am not requesting anything from your ‘natural justice’ and these invoices are clear false representations of the facts.”

18. The Applicant seeks, by way of a remedy, “a legitimate pay statement” “not an invoice”, travel time as a business cost”, and “any other amount based on your acts.”

## ANALYSIS

19. The *ESA* confers an express reconsideration power on the Tribunal. Section 116 provides
- (1) On 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.

### 1. The Threshold Test

20. The Tribunal reconsiders a decision only in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This supports the purposes of the *ESA* detailed in section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*.”
21. In *Milan Holdings*, BCEST # D313/98, the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the Tribunal to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. 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. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.
22. The reconsideration process is not meant to allow parties another opportunity to re-argue their case or to have the Director assess an entirely new complaint as the Applicant seeks to have the reconsideration Panel do.

#### *Analysis and Decision*

23. The Applicant has failed to demonstrate that this is an appropriate case for the exercise of the Tribunal’s reconsideration power. He does not identify any errors in the Tribunal’s decision or raise an arguable case that the decision should be reconsidered.
24. I have some difficulty discerning the basis for the Applicant’s application. While it is clear he is dissatisfied with the Original Decision, he does not identify any errors in that decision. He identifies what he suggests is a mischaracterization of a pay statement but does not suggest how the Tribunal Member’s decision might be in error as a result of that alleged mischaracterization.
25. I am not persuaded, in reviewing the Determination, the arguments made on appeal and the Original Decision, that the Applicant has raised significant questions of law that should be reviewed because of their importance to the parties or their implications for future cases.
26. I agree with the Member that the Applicant’s submissions on appeal were “devoid of merit” and were frivolous and an abuse of process.

27. In the absence of any intelligible arguments regarding 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, I find there is no basis for the Tribunal to exercise the reconsideration power.

**ORDER**

28. The request for reconsideration is denied. I order that the Original Decision 2020 BCEST 58, issued June 2, 2020, be confirmed.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**