

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Ramtin Lalehdashti

- of a Decision issued by -

The Employment Standards Tribunal

**PANEL:** David B. Stevenson

**FILE No.:** 2024/002

**DATE OF DECISION:** March 12, 2024

## DECISION

### SUBMISSIONS

Ramtin Lalehdashti on his own behalf

### OVERVIEW

1. Ramtin Lalehdashti (“Mr. Lalehdashti”) seeks reconsideration of a decision of the Tribunal, 2023 BCEST 112 (“original decision”), dated December 13, 2023.
2. The original decision considered an appeal of a determination issued by a delegate (“deciding Delegate”) of the Director of Employment Standards (“Director”) on June 26, 2023 (“Determination”).
3. The Determination was made by the deciding Delegate on a complaint filed by Mr. Lalehdashti, who claimed he was owed compensation for length of service from his former employer, Robert J. Wist, carrying on business as Backbone Cabinet Solutions (“Employer”).
4. The deciding Delegate, applying section 74(3) of the *Employment Standards Act* (“ESA”), found Mr. Lalehdashti was required to file his complaint ‘on or before April 29, 2022’ and, also finding there were no special circumstances that precluded Mr. Lalehdashti from delivering the complaint within the six-month time period, declined to exercise her discretion under section 74(5) of the *ESA* to extend the time period for filing the complaint.
5. An appeal of the Determination was filed by Mr. Lalehdashti alleging the Director failed to observe principles of natural justice in making the Determination.
6. The Tribunal Member making the original decision found the appeal had no reasonable prospect of succeeding and, applying section 114(1)(f) of the *ESA*, dismissed it.
7. Mr. Lalehdashti delivered a Reconsideration Application Form to the Tribunal on January 10, 2024, which included a request to extend the statutory time period for delivering an application for reconsideration from January 12, 2024, to February 29, 2024, due to “unforeseen challenges,” and to seek out legal advice.
8. The Reconsideration Application Form was deficient, as it did not include the reasons, arguments or documents supporting the application for reconsideration.
9. In correspondence dated January 11, 2024, the Tribunal granted Mr. Lalehdashti the requested extension of time to submit his reasons and argument for the reconsideration application along with any supporting documents. The correspondence clearly advises that “the February 29, 2024, deadline is not an extension to the statutory reconsideration period.”
10. On February 26, 2024, Mr. Lalehdashti delivered to the Tribunal his reasons and argument on his application and supporting documents.

11. While not expressly stating the remedy sought, it is apparent that this application seeks to have the original decision, and the Determination, set aside and the matter referred back to the Director with instructions to accept Mr. Lalehdashti's complaint and to process it.

## ISSUE

12. In any application for reconsideration, there is a threshold, or preliminary, issue of whether the Tribunal will exercise its discretion under section 116 of the *ESA* to reconsider the original decision. If satisfied the case warrants reconsideration, the issue raised in this application is whether this panel of the Tribunal should vary the original decision and the Determination.

## ARGUMENTS

13. In this application for reconsideration, Mr. Lalehdashti essentially restates the submission he made to the deciding Delegate, and again to the Tribunal Member making the original decision, explaining why he was unable to file his complaint within the six-month time period: that the mental, emotional, financial and legal challenges he faced prevented him from delivering his complaint within that period.
14. Mr. Lalehdashti submits 'new evidence' which comprises several pages of correspondence and documentation relating to the job-related injury he suffered in October 2021.

## ANALYSIS

15. 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 of the *ESA* reads:

- 116** (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.*
- (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.*

16. The authority of the Tribunal under section 116 is discretionary. A principled approach to this discretion has been developed and applied. 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). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In *Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01, the Tribunal explained the reasons for restraint:

. . . 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. In deciding whether to reconsider, the Tribunal considers timeliness and such factors as the nature of the issue and its importance both to the parties and the system generally. An assessment is also made of the merits of the original decision. The focus of a reconsideration application is, generally, the correctness of the original decision.
18. The Tribunal has accepted an approach to applications for reconsideration that resolves itself into a two-stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal’s discretion will be exercised in favour of reconsideration are limited and have been identified by the Tribunal as including:
  - failure to comply with the principles of natural justice;
  - mistake of law or fact;
  - significant new evidence that was not available to the original panel;
  - inconsistency between decisions of the Tribunal that are indistinguishable on the critical facts;
  - misunderstanding or failure to deal with a serious issue; and
  - clerical error.
19. If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised in the reconsideration.
20. I find this application does not warrant reconsideration.
21. The first issue I will address is whether or not to extend the time period for filing this reconsideration application.
22. Late section 116 applications should be carefully scrutinized to ensure that there is a very strong and compelling reason for the applicant’s failure to file a timely application: see *Serendipity Winery Ltd.*, BC EST # RD108/15 and *Onison (Canada) Corporation*, BC EST #RD056/16 at para. 11.

23. I do not accept the reasons provided by Mr. Lalehdashti for a near two-month extension of the reconsideration period are persuasive. There has been a pattern to his apparent inability to meet statutory deadlines – not only relating to his original complaint but also relating to the appeal and to this application. He has sought to excuse each failure on the same basis: emotional and physical issues caused by his workplace injury. Those issues have not caused him to miss an extension deadline.
24. Based on Mr. Lalehdashti’s history, something more is required than letters and notes on his WorkSafe file that are close to 18 months old and unsupported assertions of “unforeseen challenges.”
25. In light of the facts in this case, I am not prepared to extend the reconsideration period and, on that basis alone, this application must be dismissed.
26. In any event, it is my view that this application is entirely without merit.
27. It is not the function of a reconsideration panel to change the original decision unless the applicant can demonstrate some manifest error in it that justifies intervention and correction. I am not satisfied any error in the original decision, or any other circumstance that requires intervention, has been shown.
28. Mr. Lalehdashti has raised the same points in this application as he did in his submission to the deciding Delegate and to the Tribunal Member in the appeal. The ‘new’ documents add nothing to the information that was presented to and considered by the deciding Delegate and submitted to the Tribunal with the appeal. While some of the documents were not previously submitted by Mr. Lalehdashti, they contain the same elements as other documents that have been provided by him at various stages in the process.
29. The information in those documents were addressed in the Determination and were found not to have provided the ‘special circumstances’ that would justify extending the complaint time period. The discretion exercised by the deciding Delegate in the Determination was reviewed in the appeal decision and the Tribunal Member deciding the appeal found there was no basis for interfering with it.
30. Based on the material before the Tribunal Member making the original decision, I completely endorse the reasons for the disposition of the appeal.
31. For the above reasons, the application for reconsideration is denied.

## **ORDER**

32. Pursuant to section 116(1) of the *ESA*, the original decision 2023 BCEST 112 is confirmed.

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