

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

William Hnidan
("Hnidan")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/812

DATE OF DECISION: January 14, 1998

DECISION

OVERVIEW

This is an appeal by William Hnidan (“Hnidan”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on October 10, 1997. In that Determination, the Director concluded that Hnidan was not an employee of Coastal Mountain College of Healing Arts, Inc. (“Coastal”) and therefore he was not entitled to the provisions of the *Act*.

The time period for delivering the appeal to the Tribunal expired on November 3, 1997. On November 10, 1997 the Tribunal received the appeal which was dated November 8, 1997.

The parties were invited to make submissions on the question of whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Act* and extend the time period for requesting an appeal.

I have considered the submissions of Hnidan and the Director and have made my decision based on the reasons which are set out below. No submissions were received from Coastal

ISSUE TO BE DECIDED

The issue to be decided is whether the Tribunal should extend the time period within which Hnidan may request an appeal even though the period has expired?

FACTS

Hnidan filed a complaint at the Employment Standards Branch on April 15, 1997 claiming he was owed wages and compensation for length of service by Coastal.

On October 10, 1997 the Director issued a Determination that Hnidan was not an employee of Coastal and therefore he was not entitled to the provisions of the *Act*.

The Director submitted Canada Post Corporation’s “Acknowledgment of Receipt” card which indicates the Determination was received on October 15, 1997. On the Determination it is printed clearly that an appeal of the Determination must be delivered to the Tribunal within 23 days of the date of the Determination, or by November 3, 1997.

On November 10, 1997 the Tribunal received an appeal from Hnidan dated November 8, 1997. In his appeal Hnidan stated he received the Determination on October 19, 1997. He

further stated he had been under considerable stress in the past year after being diagnosed with cancer. When he received the Determination it was upsetting to him and he did not read nor understand the directions for an appeal, but even if he had noted the time frame for filing an appeal he did not think he could have completed his response in time as it was too difficult for him to do so at the time. Regarding the Director's conclusion, Hnidan stated that he was an employee and not an independent contractor/consultant of Coastal.

In a submission dated December 1, 1997 the Director stated that Hnidan, who had surgery for cancer in early May 1997, had asked for a decision in July respecting his status in order to enable him to pursue his claim by other means if it was determined he was not an employee. Furthermore, Hnidan was verbally informed on August 29, 1997 that he was considered to be a consultant and not an employee. Hnidan, subsequently, requested a Determination and on October 8, 1997 a telephone message was left for him indicating that a Determination would be sent via mail on October 10, 1997, or it could be delivered in person if he felt it was urgent. Hnidan did not return the call and as a result the Determination was sent via mail and received five days later. The Director contends that Hnidan had the opportunity to ask for an extension prior to the deadline for the appeal

Hnidan was provided with an opportunity to reply to the Director's December 1, 1997 submission but none was received by the Tribunal.

ANALYSIS

The *Act* contains short time frames within which an appeal must be filed. Depending upon the form of service, either personal or by registered mail, Section 112(2) of the *Act* requires that persons seeking to appeal a Determination must do so within 8 or 15 days after service. If service is by registered mail (as in this case) the Determination is deemed to be served 8 days after it is deposited in a Canada Post Office. On the Determination it states that an appeal must be delivered to the Tribunal within 23 days of the date of the Determination. Accordingly, Hnidan was given the maximum time to deliver an appeal to the Tribunal: the full 8 days allowed for service plus 15 days after service for a total of 23 days.

Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limit for an appeal. The Tribunal has consistently stated that time limits will not be extended as a matter of course (see *Niemisto v. British Columbia (Director of Employment Standards)* BCEST No. 099/96. Furthermore, the Tribunal has stated that extensions will only be granted where there are compelling reasons present (see *Moen and Sagh Contracting Ltd., v. British Columbia (Director of Employment Standards)* BCEST No. 298/96). I do not find compelling reasons present in this case.

I have considered Hnidan's explanation for the delay in filing an appeal and I find it to be inadequate. Hnidan received the Determination well in advance of the appeal deadline. The Determination clearly stated that an appeal had to be delivered to the Tribunal no later than November 3, 1997. Hnidan did not dispute that he was advised as early as August 29,

1997 that he was considered to be a consultant and therefore not covered by the *Act*. He also did not dispute that he was advised on October 8, 1997 that a Determination was being sent to him on October 10, 1997. Hnidan, however, did not contact the Tribunal on or before November 3, 1997 to advise that he intended to appeal, or to request additional time to file an appeal. He chose not to exercise his option of disputing the Determination until after the deadline expired. Even if Hnidan was unable to file a complete response by November 3, 1997, I am not satisfied that he was prevented from contacting the Tribunal about an appeal within the statutory time limits. No bona fide intention to appeal the Determination in a timely manner has been shown despite the fact that Hnidan was in receipt of the Determination and aware of its contents well in advance of the deadline for an appeal.

In my view, Hnidan had the opportunity to file an appeal in a timely manner. The obligation is on the Appellant to exercise reasonable diligence in the pursuit of an appeal. In this case, Hnidan has failed to persuade me that he has done so. I find no compelling reasons to allow this appeal.

For the above reasons, I have decided not to extend the time limit for requesting an appeal in this case.

ORDER

The request by Hnidan to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*. I order under Section 115 of the *Act* that the Determination dated October 10, 1997 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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