

An appeal

- by -

0759325 B.C. Ltd. carrying on business as House 2 Home Furnishings

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

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

TRIBUNAL MEMBER: Sheldon Seigel

FILE No.: 2008A/52

DATE OF DECISION: July 24, 2008

SUBMISSIONS

8. Mr. Powar describes the employer's reasons for the late appeal as follows:
- He was out of town for a business meeting from May 14, 2008 to May 26, 2008.
 - He looks after various businesses owned by family members in British Columbia and Alberta. He has to fill in whenever and wherever there is a shortage of help and sometimes situations arise on short notice.
 - He had to be in Edmonton from May 14, to May 19, 2008 but was required to stay until May 26 because a store manager had to be away due to a family emergency.
 - The emergency was beyond his control.
 - The appeal was late by only one day.
9. The Director submits the following:
- Following the Determination Mr. Powar contacted the Branch about paying and how interest was to be calculated. He also enquired about the appeal process, but made no mention of utilizing the process. He was advised at that time of the appeal date.
 - The employer received the Determination on April 17, 2008. Mr. Powar was not out of town on his business until May 14, 2008. There was no impediment to making his appeal during that time frame.
 - The delay in making the appeal was unreasonably long.
 - It is unknown if the employer always intended to appeal the Determination.
 - The Director was unaware that there was a likelihood of an appeal.
 - The appeal has no merit and should be dismissed.
10. The Respondent submits the following:
- The employer had 12 days to make the appeal before Mr. Powar went away on business. Even once away, Mr. Powar could have easily made the appeal electronically. There is no need for him to have been present in the Province to make the appeal.
 - The Determination and the findings against the employer show that the employer does not respect time frames.
 - The employer shows disrespect for the rules of the Tribunal
 - Allowing the late appeal would harm the Respondent's case because the payment due would be further delayed.

ANALYSIS

11. The *Employment Standards Act*, s.109(1)(b) allows for an extension of the time for appeal beyond the appeal period in the discretion of the Tribunal.
12. In deciding whether to extend the appeal deadline, the Tribunal may look at the following factors:
 1. Is there a good reason why the Appellant could not meet the deadline?
 2. Was there an unreasonably long delay in filing the appeal?
 3. Did the Appellant always intend to appeal the Determination?
 4. Were other parties- such as the Respondent and the Officer who wrote the Determination aware of the intent to appeal?
 5. Would extending the appeal deadline harm the Respondent's case?
 6. Does the Appellant have a strong case that might succeed if the Tribunal grants an extension?
13. **Good reason:** Mr. Powar says he could not meet the deadline because he was required to stay in Alberta from May 14, to May 26. He indicates, however that the business trip was scheduled to be from May 14 to May 19. He was therefore required to stay an additional seven days. He describes the reason for his extended stay as:

The store manager had to suddenly take time off due to a family emergency. Therefore, I was required to stay until May 26...
14. I note that the family emergency was not the employers', but a store manager for whom Mr. Powar was to fill in. There is no evidence that the store manager position required Mr. Powar to work long days or weekends and was not otherwise able to prepare the appeal from Alberta, orchestrate the appeal from Alberta, or participate in the appeal from Alberta. I note also that the employer is a company with at least one other officer other than Mr. Powar- the individual who filed the appeal documents.
15. I find that there is another officer of the employer who could have filed the appeal on time. Mr. Powar had ample time to prepare the appeal before he went to Alberta, and I do not have evidence on which to conclude that Mr. Powar could not have filed the appeal from Alberta. I find there is not a good reason why the Appellant could not meet the deadline.
16. **Unreasonably long delay:** The Appeal was filed two days late- not one day as Mr. Powar described it. I find that because the appeal was filed late, it must be considered that there was a delay in filing the appeal. I find that two days, absent any evidence indicating to the contrary, is not an unreasonably long delay.
17. **Always intended to Appeal:** I have insufficient information to allow me to make a determination as to whether the Appellant always intended to appeal the Determination.

18. **Other Parties awareness of the intent to appeal:** I cannot determine based on the evidence before me whether the Respondent or the Director were aware of the employer's intent to appeal.
19. **Harm the Respondent's Case:** It is axiomatic that any time there is an appeal there will be a delay in paying the payor under the Determination. I believe this provision intends to address contextual harm to the Respondent's case, rather than the delay in payment of monies due.
20. **Strong Case:** The reasons for appeal cited by the employer are little more than a re-argument of the positions taken prior to the Determination. The additional documentary evidence provided is either of little value with respect to the issues in play, redundant to the issues, or documents that could have been available at the time the Determination was made (and provided with no reason why they were not available in the first instance). Based on the substantive arguments made for the appeal, I can see no reasonable likelihood that the appeal would have been successful if it had been made in time.
21. Mr. Powar provided no evidence in support of his allegation that the Director failed to observe the principles of natural justice in making the Determination, and I can find no evidence in the record or other documents that speak to that allegation.
22. I find that the appeal period should not be extended.

ORDER

23. The appellant's request for extension of the deadline for appeal and for acceptance of the appeal is denied.
24. Pursuant to section 114(1) of the *Act* the appeal is dismissed.
25. Pursuant to section 115(1) of the *Act* the Determination dated September 2, 2005 is confirmed.
26. Interest, in accordance with s.88 of the *Act* shall continue to accrue until the sums payable are satisfied in full.

Sheldon Seigel
Member
Employment Standards Tribunal