

An appeal

- by -

Earl Leer  
("Leer")

- 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

**ADJUDICATOR:** William Reeve

**FILE No.:** 2003A/065

**DATE OF DECISION:** April 28, 2003

## DECISION

### OVERVIEW

This is an appeal by Earl Leer (“Leer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 10, 2002. The Determination found that the complainant, Leer, was not entitled to compensation for length of service in accordance with section 63 of the *Act*.

The deadline for filing an appeal of the Determination was 4:30 p.m. January 20, 2003. The appeal was received by the Tribunal on February 27, 2003. The appeal application form is dated January 14, 2003 and bears a date stamp indicating that it was received by an office of the Director of Employment Standards on January 17, 2003. The appeal was followed by a letter from Leer dated March 10, 2003 giving reasons why the appeal was late and asking that the appeal deadline be extended. This Decision on the timeliness issue is based on the written submissions from the parties.

### ISSUE

The only issue to be addressed in this Decision is whether the Tribunal should extend the deadline for requesting an appeal in accordance with the powers of the Tribunal under section 109(1)(b) of the *Act*.

### ARGUMENT

In his letter requesting extension of the deadline Leer explained, apart from other things, that he had submitted the appeal to the wrong address.

The Delegate of the Director, in a submission dated April 7, 2003, stated that the Director had no objection to the requested extension of the deadline. There was no submission from the Respondent employer on the timeliness issue.

### THE FACTS AND ANALYSIS

The Tribunal does not grant extensions automatically but it may extend a time limit if there are compelling reasons to do so. To help it decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. They are the following:

1. is there a good reason why the appeal could not be filed before the deadline;
2. was there an unreasonable delay in appealing;
3. did the appellant always intend to appeal the determination;
4. were the other parties aware of the intent to appeal;
5. is an extension of the appeal deadline harmful to the interests of the respondent; and
6. does the Appellant have a strong case that might succeed if an extension were granted.

The explanation by Leer for why the appeal was filed late appears to be supported by the documentary evidence. It appears that Leer intended to file an appeal within the time allowed, and that he did in fact submit an appeal, albeit to the wrong office, within the deadline. His error or misunderstanding in submitting his appeal to the wrong office is understandable considering the obscurity of the directions on the appeal form that was in use at that time.

On the question of whether Leer has a case that might succeed if an extension were granted, it can be concluded from his submissions, that he has arguments concerning the findings in the Determination that might justify the closer scrutiny that would occur if the appeal were to be heard on its merits.

After considering all the criteria listed above as well as the evidence and arguments submitted, I believe that the interests of fairness are best served by extending the deadline and allowing the appeal to be heard on its merits.

## **ORDER**

Pursuant to section 109(1)(b) of the *Act* I order that the time for filing an appeal in this matter be extended to February 27, 2003 and that the appeal by Leer be accepted.

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**William Reeve**  
**Adjudicator**  
**Employment Standards Tribunal**