

**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 -

Michela E. M. Cipl, M.D.  
("Cipl")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

Adjudicator: Mark Thompson

File No.: 98/61

Date of Decision: June 3, 1998

**DECISION**

**OVERVIEW**

This case began with an appeal by Michela E. M. Cipl, M.D. pursuant to Section 112 of *Employment Standards Act* (the “*Act*”) against a Determination (the “Determination”) issued by a Delegate of the Director of Employment Standards (the “Director”) on January 7, 1998. The Determination stated that an appeal must be received by the Employment Standards Tribunal (the “Tribunal”) by January 30, 1998. The Tribunal received the appeal on January 31, 1998. The Registrar of the Tribunal informed Cipl on February 4, 1998 that her appeal had been received outside of the timelines contained in the Determination and did not comply with Section 112(2) of the *Act*. Consequently, the appeal would not be considered. When Cipl appealed the decision to reject the original appeal, the Registrar then invited Cipl and the Director’s Delegate to make submissions on a possible extension of the deadline under Section 109(1)(b) of the *Act*. Cipl replied to the Registrar’s letter on March 25, 1998 effectively requesting that the Tribunal exercise its discretion under Section 109(1)(b). The Director’s Delegate opposed granting an extension of the deadline. The appeal was decided based on written submissions.

**ISSUES TO BE DECIDED**

The first issue raised in this appeal is should the Tribunal exercise its discretion to extend the deadline for filing an appeal. If the deadline is extended, then the remaining issue is whether the penalty for Cipl’s failure to file employee records in a timely fashion should be maintained.

**FACTS**

The Director’s Delegate sent Cipl a Demand for Employer Records on September 15, 1997, requiring the records to be produced by September 30, 1997. On September 30, Cipl requested an extension of the deadline. The Delegate granted an extension until October 9, 1998. In several conversations during the month of October, the Director’s Delegate informed Cipl that she would be subject to a penalty if she did not deliver the records. Cipl did not produce the records in question, and the Delegate issued the Determination on January 7, 1998. It found that Cipl had contravened Section 46 of the *Act* by failing to produce employer records in response to a demand issued by the Director’s Delegate. The Determination imposed a penalty of \$500 on Cipl and stated that an appeal must be received by the Tribunal not later than January 30, 1998. The Tribunal received Cipl’s appeal by fax on January 31, 1998. The Registrar of the Tribunal notified Cipl that her appeal would not be considered because it was filed after the deadline in the Determination and did not comply with Section 112(2) of the *Act*.

Cipl then appealed the Registrar's ruling. In a letter to the Registrar of the Tribunal on March 25, 1998, Cipl stated that the reason her appeal was received after the deadline was that her fax machine was set 15 hours ahead of "Vancouver time." Although she had sent her appeal by fax late on January 30, her fax machine erroneously stated that the document had been sent on January 31, 1998. Neither she nor her secretary could correct the problem with the fax machine at the time. She pointed out that the Determination did not state the exact time when the request for appeal had to be filed with the Tribunal and that she had in fact filed the appeal before 11:59 p.m. on January 30. Cipl further stated that she filed her appeal at the last minute because the form had been misplaced in her office, and she was not aware that the form arrived.

In her appeal against the Determination, Cipl acknowledged that she failed to respond to the Demand for Employee records by the deadline set by the Director's Delegate. She explained this lapse by her own illness, a death in her family in Europe and difficulties in locating the records, which were stored in her home.

In her reply to the appeal, the Director's Delegate pointed out that the original Demand for Employer Records contained a deadline of September 30, 1997. At Cipl's request, the Delegate extended the deadline to October 9, 1997. On October 7, Cipl informed the Delegate that she did not have the records at her office. The Delegate warned Cipl that she could be subject to a penalty if she failed to provide the records. Cipl telephoned the Delegate on several occasions in the month of October to tell her that she not been able to locate the records. On October 30, the Director's Delegate provided Cipl with a calculation of wages owing based on information provided by the complainant. The Delegate further informed Cipl that she could respond to the calculation by November 14, 1997. Cipl did not communicate with the Director's Delegate until after the Determination was issued. Cipl ultimately provided the records in question to the Director's Delegate on April 30, 1998. In her appeal of the Determination, Cipl acknowledged that she had not filed the records before the deadline, but cited personal problems and her decision to store her employment records at home as the causes of the failure to present the records.

## ANALYSIS

The *Act* requires employers to maintain records of employment for their employees at their place of business. The relatively short time limits for producing records in response to a demand from the Director are consistent with the purpose of the *Act* to provide prompt resolution of disputes between employers and employees (or former employees). For this reason, Section 46 of the *Employment Standards Regulation* gives the Director the authority to require employers to produce the records required by the *Act*. Section 112(2)(a) of the *Act* states that a request for an appeal must be delivered within 15 days after the date of service if the determination was served by registered mail. In this case, the Determination stated that the appeal "must be received by the Employment Standards Tribunal not later than January 30, 1998", i.e. approximately 7 days after the statutory deadline.

Cipl argued that her appeal was filed a few hours after the deadline for submission. In fact, both the *Act* and the Determination stated that the appeal must be received by the Tribunal on or before the appointed date. The Determination had already extended the statutory deadline. Cipl attributed the delay in filing an appeal to a problem with her fax. She did not refer to other means of communicating with the Tribunal. Had Cipl's failure to comply with the deadline to file the appeal been an isolated incident, there might be a case for exercising the discretion granted the Tribunal in Section 109(1)(b) of the *Act*. However, in this case, Cipl failed to respond to the Demand for Employer Records by the deadline the Director's Delegate established, thus causing the Delegate to issue the Determination. She did not provide the records until months after the Determination. She did not reply to the Delegate's calculation of wages owing. Cipl then failed to meet the established deadline to file her appeal, without providing substantial grounds for granting an extension beyond administrative problems in her office.

Given the pattern of delay in responding to communications from the Director's Delegate, I decline to exercise the authority granted to the Tribunal under Section 109(1)(b) of the *Act*.

**ORDER**

For these reasons, Cipl's request to extend the time period for requesting an appeal is denied. The appeal is dismissed pursuant to Section 114 of the *Act*.

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**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**