

An appeal

- by -

Evea Esthetics & Day Spa Inc.
("Evea")

- 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/176

DATE OF DECISION: August 12, 2003

DECISION

OVERVIEW

This is an appeal by Evea Esthetics & Day Spa Inc. (“Evea”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued by the director of Employment Standards (the “Director”) on April 28, 2003. The Determination found that the *Act* had been contravened and that Evea owed employee Shelley Veselic (“Veselic”) \$704.35 in vacation pay and interest.

The deadline for appeal of the Determination was June 5, 2003. The Tribunal received this appeal on June 19, 2003. The implication of filing a late appeal is that an extension of the deadline for appeal is being sought. The appeal included reasons why the appeal was late.

The issue of whether to extend the deadline for appeal is decided on the basis of 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

On the appeal form, in response to the request for an explanation if an appeal was late, Evea’s representative stated,

“I came back from a trip & was under going many test. I have a poss. Blood clot. I was not well. I was in and out of emergency and still am under going tests. I am recovering from a spinal cord surgery & am not always well, also my mother-in-law was diagnosed with ALS & with poss. 6 mth. to live + both her children were away & there was just me.”

There was also reference on the appeal form to wanting to put a decision “on hold” until Revenue Canada sorts something out.

Evea also referred to the timeliness issue in a typed document submitted with the appeal. In this document Evea referred in more detail to the personal, family and medical problems mentioned on the appeal form.

In a submission dated July 4, 2003 Evea’s representative reiterates and gives still more details about her personal and medical problems. She also refers to a foreign vacation trip that she took apparently departing soon after receiving the Determination. In yet another submission dated July 25, 2003 Evea’s representative again refers to her numerous personal and medical problems. She indicates that she returned from her foreign vacation on May 21, 2003.

Nothing concerning the issue was received from the Respondent, Veselic.

In responding to the timeliness issue the Delegate of the Director acknowledges that Evea informed the Delegate of an intention to appeal well in advance of the deadline, in a fax message received May 7,

2003. In the Delegate's submission the Tribunal is asked not to grant the desired extension as Evea had the opportunity to file the appeal before the deadline.

THE FACTS AND ANALYSIS

The *Act* imposes an appeal deadline to ensure that appeals are dealt with promptly. This is consistent with one of the purposes of the *Act*, which is to provide fair and efficient procedures for resolving disputes. Under section 109(1)(b) of the *Act*, the Tribunal can extend the time for requesting an appeal, even though the appeal period has expired.

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.

There is no doubt that during the entire period concerned in this appeal Evea's representative has suffered from a lamentable series of personal and health-related problems. Despite these problems the representative has continued to manage the affairs of Evea, has dealt with and continues to deal with several tax, legal and similar problems for Evea, has assumed responsibility for the care and affairs of an elderly family member and has managed to go on a foreign vacation to some unspecified destination.

In responding to the timeliness issue the Delegate of the Director acknowledges that Evea informed the Delegate of an intention to appeal well in advance of the deadline, in a fax message received May 7, 2003. The fax states, in part,

“We are writing to inform you we are “appealing” your decision and have been advised not to send a cheque. Our apply will be in the Tribunal office by 4:30 June 5th, 2003.”

When no appeal was filed a demand letter dated Friday, June 13, 2003 was sent to Evea. On the following Tuesday, June 17, 2003, Evea contacted the Tribunal to obtain the appeal form that was submitted on June 19, 2003.

From these facts it can be concluded that Evea's representative was aware of the deadline for filing an appeal however, apparently, devoted her attention to other matters. The decision not to file an appeal within the time limits appears to have been made, not because some compelling reason prevented Evea from doing so but rather because she decided to devote her limited time and resources to other matters.

In the absence of a compelling reason why the appeal was not made within the time limits it would be difficult to conclude that the two-week delay was reasonable. Furthermore, it would appear from the

sequence of events, that were it not for the fact that the Delegate initiated collection action, thus stimulating action on an appeal, the delay might have been greater, or no appeal might ever have been filed.

Evea did state to the Delegate an intention to appeal well in advance of the deadline.

In the absence of any submission from the Respondent, Veselic, it may be assumed that extension of the deadline would affect her interest adversely to the extent that it resulted in a delay in reaching final resolution of the matter.

The final consideration is whether the appellant has a strong case that might succeed if an extension were granted. The amount found owing is composed of vacation pay and interest. Evea, in the appeal, makes reference to a wide range of matters involving the parties, however nothing submitted seriously challenges the conclusions in the Determination that vacation pay was payable or the calculation of the amount found owing. For this reason I am not able to conclude that Evea has a strong case that might succeed if an extension were granted.

After considering all of the factors noted above, I have concluded that nothing has been provided that constitutes a compelling reason to extend the deadline, therefore I must decline to do so.

ORDER

The appellant's request for extension of the deadline for appeal and for acceptance of the appeal is denied. The appeal is dismissed pursuant to section 114(1) of the *Act*. Pursuant to section 115(1) of the *Act* the determination dated April 28, 2003 is confirmed, along with any additional interest calculated in accordance with section 88 of the *Act*.

William Reeve
Adjudicator
Employment Standards Tribunal