

August 11, 2000

BC EST #D323/00

To: Interested Parties

Re: Employment Standards Act - Part 13

**Appeal of a Determination issued by the Director of Employment Standards on
May 15, 2000**

**Teresa Penner -and- Director of Employment Standards
Tribunal File No. 2000/407 PDET**

ISSUE: TIMELINESS OF THE APPEAL

The Director of Employment Standards (the “Director”) issued a Determination against Teresa Penner (the “Appellant”) on May 15, 2000. The Determination imposed a penalty of \$500 on the Appellant, under section 28(b) of the *Employment Standards Regulation*, for failing to produce proper payroll records contrary to section 46 of the *Employment Standards Act*. The appeal deadline was June 7, 2000. The Appellant appealed on June 12, 2000.

The Tribunal must decide whether to extend the appeal deadline from June 7, 2000, to June 12, 2000 and this decision deals only with that issue.

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The *Act* imposes an appeal deadline to ensure appeals are dealt with promptly. That 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 decide if there are compelling reasons, the Tribunal has consistently applied a policy involving six criteria. Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

1. there is a good reason they could not appeal before the deadline,
2. there is not an unreasonably long delay in appealing,
3. they always intended to appeal the determination,
4. the other parties (the respondent and the Director) are aware of the intent to appeal,
5. the respondent will not be harmed by an extension, and
6. they have a strong case that might succeed, if they get an extension.

ANALYSIS

Applying the six factors described above, to this case:

1. In her appeal, the Appellant says she filed the appeal late because she did not read the whole Determination and did not see the appeal deadline. The Director says that this is not a reasonable basis to extend the appeal deadline because the Appellant had 22 days before the deadline to read the Determination. I agree.
2. The appeal was filed 5 days past the deadline.
3. The late appeal is the only evidence of intent to appeal.
4. The Director would have learned of the intent only when the Tribunal sent it notice of the late appeal.
5. Because this is a penalty determination, there is no respondent.
6. It does not appear that Appellant has a strong case. She is trying to introduce evidence about an audit that she could have given to the Director when the Director issued the Demand for Payroll Records. It appears that the Appellant chose not to give that information to the Director. She says she did not send the documents the Employment Standards Branch requested because Revenue Canada was having her audited at the same time. She needed to keep all her records pertaining to the employment of the employee so the auditor could look over everything.

CONCLUSION

The Appellant had a right to appeal the Determination before the deadline: she also had a matching responsibility to exercise her right within the appeal period. The Appellant did not discharge that responsibility and did not exercise reasonable diligence in pursuing an appeal. She chose not to read the Determination and the result of her choice is that she missed the appeal deadline. The balance of these six factors does not establish any compelling reason to extend the appeal deadline.

ORDER

The Tribunal does not extend the appeal deadline and the appeal will not proceed.

Norma Edelman
Vice-Chair
Employment Standards Tribunal