This decision was the subject of a Reconsideration. See WCAT-2005-04555, dated August 30, 2005.

WCAT Decision Number: WCAT-2004-00136-AD
WCAT Decision Date: **January 13, 2004**
Panel: Janet Patterson, Vice Chair

Introduction

The employer seeks an extension of time to appeal findings of the Workers' Compensation Review Board (Review Board) dated October 11, 2001. The employer is represented by a Health and Safety Officer. The worker did not make a submission in this application, although he indicated that he wished to participate.

The employer appealed these Review Board findings to the Appeal Division under section 91(1) of the former *Workers Compensation Act* (Act), which provides that appeals must be filed "not more than 30 days after the finding is sent out, or within a longer period the chief appeal commissioner may allow". The Review Board's decision was mailed on October 12, 2001 and the employer notified the Appeal Division of its intent to appeal on January 16, 2003. When ten days for mailing are taken into account, the employer's appeal is 451 days late.

Issue

Should the employer be granted an extension of time to appeal the Review Board's findings of October 11, 2001?

Jurisdiction

This extension of time application was filed with the Appeal Division. On March 3, 2003, the Appeal Division and the Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). Section 39(1) and 39(2) of the transitional provisions contained in Part 2 of Bill 63, the *Workers Compensation Amendment Act (No. 2), 2002*, provide that all appeal proceedings pending before the Appeal Division on March 3, 2003 are continued and must be completed as proceedings pending before WCAT (except no time frame applies to the making of the WCAT decision). As a result, this application for an extension of time is being completed as a WCAT matter.

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Criteria for An Extension of Time

WCAT may grant an extension of time according to the criteria set out in section 243(3) of the new Act as amended by Bill 63. These criteria are different than the criteria previously applied by the Appeal Division and set out in the *Appeal Division Decision No. 33 Practice and Procedure, Workers' Compensation Reporter*, Vol. 17.

In *WCAT Decision #2003-01108-AD*, the panel considered the issue of which criteria should be adopted when a party applied to the Appeal Division for an extension of time prior to March 3, 2003. I concur with the panel's reasoning in that case, and for those reasons, conclude that the criteria previously applied by the Appeal Division are applicable in this matter.

According to section 3.4 of Decision #33, factors to be considered include whether there is substantial and material new evidence and whether there are exceptional circumstances which prevented the party from initiating an appeal in time. Other factors may be taken into account and none is considered determinative.

Background and Submissions

The employer submits that the employer became aware of significant new medical evidence as a result of updated file disclosure in December, 2002. The employer submits that this evidence was not available to the employer within the initial appeal timeframes.

According to the claim file, the employer requested disclosure on March 29, 1999 and December 3, 2002.

Reasons and Findings

In its submissions, the employer indicates that there is significant new medical evidence which was not available to the employer within the appeal period. However, the employer does not specify the medical evidence which was not available nor why it is significant to this appeal.

I note that the employer did not request disclosure between March 29, 1999 and the oral hearing on September 11, 2001 (over two years) although it was entitled to do so. Given that the new medical evidence is not identified, it is difficult to conclude that the relevant information was not available to the employer until after the appeal period. I also give weight to the significant period of delay. Finally, in the absence of specific information, I cannot conclude that the new information is so significant to this appeal that an extension of time should be granted.

For these reasons, I conclude that the discretion to grant an extension of time should not be exercised in favour of the employer.

While not germane to the application before me, I note that the employer's reasons for the delay in initiating the appeal may not have met the even more stringent criteria set out in section 243(3) of the current Act. This underscores the importance of parties initiating appeals within the statutory time limits for appealing in order to preserve their appeal rights.

Conclusion
The employer's application for an extension of time is denied.

Janet Patterson
Vice Chair

JP/dcw

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