

Noteworthy Decision Summary

Decision: WCAT 2003-04156 **Panel:** Jill Callan **Decision Date:** December 18, 2003

Extension of time under section 243(3) of the Workers Compensation Act – Example of an EOT denial where the delay is short (5 days) – Worker unsuccessfully contended that special circumstances precluded her from filing the appeal on time because she confused the process of appealing the Review Division decisions to WCAT with the process for appealing a decision from a Workers' Compensation Board case manager; accordingly she thought she had 90 days to appeal – The Review Division decisions were sent to the worker along with a WCAT appeal pamphlet and a cover letter informing her that she had 30 days from the date of the decisions to appeal to WCAT – The panel was satisfied that the information on the time frame and process for appealing to WCAT provided by the Review Division was sufficient to enable the worker to initiate her appeals to WCAT in a timely manner

The worker was 5 days late in notifying WCAT of her intention to appeal two Review Division decisions. The issue was whether the worker should be granted extensions of time for filing her appeals of the Review Division decisions.

The worker contended that special circumstances precluded her from filing the appeals on time because she confused the process for appealing the Review Division decisions with the process for appealing a decision from a Workers' Compensation Board case manager. Accordingly, she thought she had 90 days to appeal the Review Division decisions. The worker's claim contains a decision from a case manager informing the worker she had 90 days to appeal the decision to the Review Division. The Review officer's decisions were mailed to the worker with a cover letter attached informing her that the decisions could be appealed to WCAT within 30 days of the date of the decisions. The cover letter also indicated that WCAT's appeal pamphlet had been enclosed. In these circumstances, the panel was not satisfied that special circumstances precluded the worker from initiating the appeals to WCAT within the statutory time frame. Although the worker indicated she became confused as a result of receiving the case manager's decision, the panel was satisfied that the information on the time frame and process for appealing to WCAT provided by the Review Division was sufficient to enable the worker to initiate her appeals to WCAT in a timely manner. Given that there were no special circumstances that precluded the initiation of the appeals on time, it was unnecessary for the panel to consider whether an injustice would result from the denial of the extensions of time. The worker's extension of time applications were denied.

WCAT Decision Number:**WCAT-2003-04156****WCAT Decision Date:****December 16, 2003****Panel:****Jill Callan, Chair**

Introduction

The worker seeks extensions of the 30-day statutory time limit to appeal two decisions dated July 15, 2003, issued by the Review Division of the Workers' Compensation Board (the Board).

The review officer framed the issues arising out of the first review as:

1. the Board's decision that the worker is not entitled to additional acupuncture treatment; and
2. the Board's decision to approve four weeks of physiotherapy.

The review officer framed the issue arising out of the second review as follows:

At issue is a review of the Board's decision to deny the worker further treatment, including physiotherapy.

When the eight-day period for mailing set out in section 221(2) of the *Workers Compensation Act* (the Act) is taken into account, the statutory time limit for the initiation of the worker's appeal expired on August 22, 2003. On August 27, 2003, the worker initiated the appeal by telephoning WCAT. Accordingly, the worker was five days beyond the statutory time limit for notifying WCAT of her intention to appeal the Review Division decision.

The employer is participating in the worker's appeals and is represented by a consultant. However, the employer has not provided a submission regarding these applications.

Issue(s)

The issue is whether the worker should be granted extensions of time for filing her appeals of the July 15, 2003 Review Division decisions.

Analysis

Section 243(3) of the Act sets out three requirements that must be met in order for an extension of time application to be successful:

- Firstly, the appellant is required to demonstrate that special circumstances precluded the filing of the notice of appeal on time;
- Secondly, it must be determined that an injustice would result if the extension of time were not granted; and
- Thirdly, the chair must exercise the discretion to grant the extension of time in favour of the applicant.

In *WCAT Decision #2003-01810* (available online at <http://www.wcat.bc.ca/research/appeal-search.htm>) I provided further analysis of the three requirements.

The worker provided a submission dated September 8, 2003 in support of her applications for the extensions of time. She contends that special circumstances precluded her from filing the appeals on time because she confused the process for appealing the Review Division decisions with the process for appealing a July 11, 2003 decision from a case manager of the Board. Accordingly, she thought she had 90 days to appeal the Review Division decisions.

The worker's claim file contains a July 11, 2003 decision of a case manager which informed the worker that the case manager was denying a request for a reopening of her claim for further treatment for her upper back and neck symptoms. The decision informed the worker that she had 90 days to appeal the decision to the Review Division and informed her as to how to obtain a request for review.

The review officer mailed the July 15, 2003 decisions to the worker with a covering letter that informed the worker that the decisions could be appealed to WCAT within 30 days of the date of the decisions. The covering letter also indicates that WCAT's appeal pamphlet had been enclosed.

In these circumstances, I am not satisfied that special circumstances precluded the worker from initiating the appeals to WCAT within the statutory time frame. Although the worker has indicated she became confused as a result of receiving the case manager's decision, I am satisfied that the information on the time frame and process for appealing to WCAT provided by the Review Division was sufficient to enable the worker to initiate her appeals to WCAT in a timely manner.

As I have not found that special circumstances precluded the initiation of the appeals on time, I find it unnecessary to consider whether an injustice will result from the denial of the extensions of time.

In reviewing the documents related to these applications, I note that WCAT does not appear to have invited the employer's representative to provide submissions concerning the worker's extension of time applications. In these circumstances, I would normally delay my consideration of the applications so that the employer could be invited to make submissions and the worker could be invited to respond to the employer's submissions.

However, given that my conclusion on the merits of these applications is not adverse to the employer, I have proceeded to render my decision without delaying the process to obtain submissions from the employer.

Conclusion

The worker's extension of time applications to appeal the two Review Division decisions dated July 15, 2003 are denied. The appeals will not proceed.

Jill Callan
Chair

JC/dlh