

Noteworthy Decision Summary

Decision: WCAT-2004-01294**Panel:** Jill Callan**Decision Date:** March 12, 2004***Extension of time to appeal granted where the worker provided telephone notice of intent to appeal but failed to submit a completed written notice of appeal within 21 days***

On October 29, the worker telephoned WCAT within the statutory time frame for appeal to indicate his intention to appeal. Pursuant to item #3.40 of the *Manual of Rules, Practices and Procedures*, a registration clerk sent him a letter requesting that he submit a completed notice of appeal within 21 days, i.e. by November 20. When he failed to do so, the deputy registrar wrote to him advising that his appeal was abandoned and that if he wished to reactivate the appeal, he would need to apply for an extension of time. The worker applied to the chair for an extension of time.

In a letter to WCAT dated December 9, the worker indicated that his family physician would be writing a letter on his behalf and that he would be seeing her the following day. In his notice of appeal dated December 11, the worker attached the letter from his family physician dated November 24. This letter was addressed to the Review Division and received by them on November 24. However the worker was not provided a copy until he saw the physician on December 10. In his notice of appeal form, the worker indicated that he wanted his appeal to proceed as a "fast track read and review". This required him to provide all of his evidence and submissions with the notice of appeal. He notified WCAT of his intention to appeal within the statutory time frame for appealing and was delayed in filing his notice of appeal because he was seeking further medical support from his family physician. Although it would have been prudent for the worker to choose a method of appeal that did not involve providing evidence with his notice of appeal, he did not do so. Once the worker received the physician's letter, he completed the signed notice of appeal form on December 11, and on December 12 faxed it to WCAT along with the physician's letter of November 24. The chair was satisfied that the worker believed he needed to provide evidence supporting his appeal with his notice of appeal form and that he was reasonably diligent in pursuing his appeal. The fact that the worker did not receive the November 24 letter until December 10 constituted special circumstances which precluded him from filing the notice of appeal form on time. Given the decision under appeal concerned wage loss benefits for a back injury, the second element of section 243(3) of the *Workers Compensation Act* was also met. Since the worker was only 11 days late in filing an appeal, the employer was not prejudiced by the delay. An extension of time to appeal was granted.

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Introduction

The worker seeks an extension of the 30-day statutory time limit to appeal a decision of the Review Division of the Workers' Compensation Board, which is dated October 24, 2003.

Although invited to do so, the employer is not participating in this application.

Issue(s)

The issue is whether the worker should be granted an extension of time for filing his appeal of the October 24, 2003 Review Division decision.

Background and Analysis

The chronology of events relevant to this application is as follows:

- On October 29, 2003, the worker telephoned WCAT indicating his intention to appeal the review officer's October 24, 2003 decision. Accordingly, he contacted WCAT well within the statutory time frame for appealing, which expired on December 1, 2003.
- By letter dated October 30, 2003, a WCAT registration clerk acknowledged the worker's telephone call, provided him with a notice of appeal form, and requested that the form be returned on or before November 20, 2003. The letter informed the worker that, if the notice of appeal was not received by November 20, 2003, WCAT would treat the appeal as abandoned. In addition, the letter stated a notice of appeal submitted after November 20 would be considered to be out of time, and an extension of time application would be needed to pursue the appeal.
- By letter dated December 1, 2003, the vice chair/deputy registrar wrote to the worker advising that, as no response was received by November 20, 2003, the appeal was considered abandoned and WCAT would not be proceeding. The letter informed the worker that, if he wished to reactivate the appeal, he would need to complete the notice of appeal form as well as an extension of time application form.
- In a telephone conversation on December 9, 2003, the worker advised a WCAT registry staff member that he wished to apply for an extension of time and reactivate his appeal.

- In a letter to WCAT dated December 9, 2003, the worker indicated that his doctor was writing a letter on his behalf and he would see her on December 10.
- On December 12, 2003, which was 11 days beyond the statutory time limit for initiating the appeal, WCAT received the worker's completed notice of appeal form.

Item #3.40 of the WCAT *Manual of Rules, Practices and Procedures* (MRPP) provides, when an appellant gives telephone notice of the intent to appeal, the registration clerk will write to the appellant and request a completed notice of appeal be submitted within 21 days of the letter. Pursuant to item #3.50, if the form is not completed and provided to WCAT within the 21 day period, WCAT will find the appeal to be abandoned and the appellant will require an extension of time in order to pursue the appeal.

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

- the appellant is required to demonstrate that special circumstances precluded the filing of the notice of appeal on time;
- it must be determined that an injustice would result if the extension of time were not granted; and
- 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.

In his notice of appeal form dated December 11, 2003, the worker described the special circumstances that, he contends meet the first requirement of section 243(3). He stated that his family physician was writing a letter on his behalf and he did not have it in time to meet the November 20 deadline. He has attached a letter from his family physician dated November 24, 2003 to his notice of appeal. The letter is addressed to the Review Division and the Board's electronic file system indicates that the letter was received by the Review Division on November 24, 2003. The November 24, 2003 letter does not indicate that the worker's physician sent a copy of her letter to him. Accordingly, I am satisfied that he was not aware she had previously sent the letter to the Review Division.

On his notice of appeal form, the worker has indicated that he wanted his appeal to proceed as a "fast track read and review". This required him to provide all of his evidence and submissions with the notice of appeal. Another option would have been

for the worker to proceed by “read and review” and submit his evidence when requested by WCAT to do so.

The October 30, 2003 letter from the registration clerk made it clear that the worker was required to submit his notice of appeal by November 20, 2003 and negative consequences would flow from his failure to do so. This is a factor that would tend to weigh against granting the worker an extension of time. However, I also note the worker notified WCAT of his intention to appeal within the statutory time frame for appealing and was delayed in filing his notice of appeal because he was seeking further medical support from his family physician. It would have been prudent for the worker to choose a method of appeal that did not involve providing the evidence with his notice of appeal. However, he did not do so. Apparently, he saw his family physician on December 10 and received a copy of the November 24 letter. He then completed and signed the notice of appeal form on December 11, 2003 and faxed it to WCAT from a retail business the following morning.

The worker contacted WCAT within the statutory time frame for appealing. I am satisfied that he believed he needed to provide the evidence supporting his appeal with his notice of appeal form and that he was reasonably diligent pursuing his appeal. In these circumstances, I find the fact that the worker did not receive the November 24, 2003 letter until December 10, 2003 constitutes special circumstances which precluded him from filing the notice of appeal form on time.

The worker submits that an injustice would result if an extension of time were not granted because he had worked hard for 14 years and has not recovered from the compensable injury. The decision under appeal concerns his wage loss benefits for a back injury. Given the importance of the decision under appeal, I find that the second element of section 243(3) has been met.

Since the worker was only 11 days late in filing the notice of appeal, I find the employer will not be prejudiced by the delay. Accordingly, I find it appropriate to exercise the discretion to grant the worker an extension of time.

Conclusion

The worker is granted an extension of time to appeal the October 24, 2003 Review Division decision. The WCAT Registry will process his appeal.

Jill Callan, Chair

JC:dlh



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