

Noteworthy Decision Summary

Decision: WCAT-2005-04706 **Panel:** Michelle Gelfand **Decision Date:** September 7, 2005

Extension of Time to Appeal – Appeal Filed Within 30 Days of Actual Receipt of the Decision Being Appealed – Section 243(3) of the Workers Compensation Act

Where a decision is sent out late and the worker appeals within 30 days of her receipt of the decision, an extension of time may be granted. A worker should not be deprived of the full 30-day statutory appeal period in which to consider her options or seek advice before initiating an appeal. The requirements for the exercise of discretion in section 243(3) of the *Workers Compensation Act* (Act) are met: the late mailing constitutes special circumstances which precluded the initiation of the appeal within the statutory time period.

In this case, the worker applied for an extension of the 30-day statutory time period to appeal a decision of a review officer. The decision was postmarked six days later than the decision date, and the worker received the decision 12 days after the decision date. Her appeal was filed two days late, taking into account the statutory 30-day period and the eight-day period for mailing. However, her appeal was filed in less than 30 days of her receipt of the decision.

The worker's application for an extension of time to appeal was granted since the requirements in section 243(3) of the Act were met. As the issue was of significance to the worker, the panel found it appropriate to exercise her discretion to grant the extension.

**This decision has been published in the *Workers' Compensation Reporter*:
21 WCR 287, #2005-04706, Extension of Time to Appeal - Appeal Filed Within 30
Days of Receipt of Decision**

WCAT Decision Number : WCAT-2005-04706
WCAT Decision Date: September 07, 2005
Panel: Michelle Gelfand, Vice Chair

Introduction

The worker applies for an extension of the 30-day statutory time period to appeal a May 14, 2004 decision of a review officer (*Review Decision #4935*). The issue on that review was whether the worker's right hand complaints were compensable.

The chair of the Workers' Compensation Appeal Tribunal (WCAT) is authorized under section 243(3) of the *Workers Compensation Act* (Act) to extend the time to appeal. That authority has been delegated to all members of WCAT.

The worker is receiving advice on this application from a worker's advisor. The employer is not participating, although invited to do so.

I have considered this application based on a review of the claim file and a written submission received on behalf of the worker.

Issue(s)

The issue is whether the worker should be granted an extension of time to appeal the review officer's decision of May 14, 2004.

Background and Analysis

This appeal was initiated on June 23, 2004. Taking into account the statutory 30-day appeal period, and the 8-day period for mailing, this appeal was filed two days late.

Section 243(3) of the Act sets out three requirements for a successful application for extension of time. The chair (or delegate) must conclude that:

- Special circumstances precluded the filing of the appeal on time;
- An injustice would result if the extension were not granted;
- The discretion to grant the extension should be exercised.

The worker explains her short delay in appealing on the basis that she received the review officer's decision on May 26, 2004, and that the envelope in which she received it was postmarked May 20, 2004. She further explains that she was suffering from depression at the time and dealing with various personal issues. As well, she believed that she had to provide her full submission on the appeal within the appeal period.

Section 243(1) of the Act states that, in the case of appeals from review officers' decisions, the notice of appeal must be filed within 30 days "after the decision being appealed was made." A further 8 days is added to the appeal period, in accordance with section 221(2) which states that a document sent by mail is "deemed to have been received on the 8th day after it was mailed." According to section 221(4), that presumption of service is rebutted if a party who acts in good faith does not receive the copy until a later date due to "absence, accident, illness or other cause beyond the party's control".

In this case, I accept the worker's evidence regarding the date of mailing and her receipt date of the decision. Therefore, although the worker did not appeal within 30 days after the decision was made, she did appeal in less than 30 days of her receipt of the decision. I find that the late mailing of the decision constitutes special circumstances which precluded the initiation of the appeal within the statutory time period. It would be unfair for a party who receives the decision late, through no fault of their own, to be deprived of the full 30 day statutory appeal period in which to consider their options, seek advice, etc. before initiating an appeal.

As the issue is one of significance to the worker, I find that an injustice would result if the appeal were not allowed to proceed. I find it appropriate to exercise my discretion to grant the extension.

Conclusion

I allow the worker's application for an extension of time to appeal the decision of May 24, 2004. The appeal will be referred to the Registry for further processing.

Michelle Gelfand
Vice Chair

MG/dw