

## Decision of the Appeal Division

**Number: 2001-0502**

**Date: March 12, 2001**

**Panel: Laura Bradbury**

**Subject: Occupational Health and Safety Appeals —  
Extension of Time to Appeal**

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### Introduction

- (1) The employer requests an extension of time to appeal the August 4, 2000 decision of a hearing chair in the review and penalty section of the Workers' Compensation Board. The decision imposed an administrative penalty on the employer in the amount of \$4,500 for breach of section 20.75 of the *Occupational Health and Safety Regulation*. The section requires an employer to provide fall protection for workers working on a roof [above] 10 feet.
- (2) The Board sent the employer a copy of the decision by registered mail on August 10, 2000. The employer filed its appeal with the Appeal Division on November 3, 2000 which is outside the *Workers Compensation Act's* (the Act's) 30-day time limit for bringing an appeal of an administrative penalty.

### Issue(s)

- (3) Is the employer entitled to an extension of time to appeal the administrative penalty?

### Background

- (4) The employer's representative sent a letter dated October 31, 2000 with the employer's Notice of Appeal. The representative wrote that the delay in filing the appeal: "is the result of the correspondence being misfiled while I was out of town on other business."
- (5) An appeal officer advised the employer and the joint health and safety committee on November 23, 2000 of the 30-day time limit to appeal administrative penalties and enclosed a copy of Appeal Division Decision #27 [Volume 15 *Workers' Compensation Reporter*, page 701] which sets out our practices and procedures. The appeal officer asked the employer to provide any further submissions by December 7, 2000. No other submissions were received.

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## Decision

- (6) The legislation with respect to health and safety matters was recently amended by the legislature. The amendments came into effect on October 1, 1999 as Part 3 of the Act and they include the new mandatory 30-day appeal period (section 209). By contrast to Part 1 of the Act, which allows for an extension of time to appeal (section 96(6)), Part 3 does not contain any provision authorizing the Appeal Division to extend the time for filing an appeal on health and safety matters. Administrative penalty matters are included in Part 3 of the Act.
- (7) Decision #27 sets out the Appeal Division's practices and procedures for appeals under Part 3 of the Act. Item 3.2 asks "when does the 30 day period commence?" It states:

The *Act* does not give the Appeal Division the authority to extend the 30 day time limit. However, in determining when the 30 day period commences, the Appeal Division will consider when a decision is deemed to have been "served".

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A notice, order or other document not personally served must be sent by registered mail to the person's last known address and is deemed to have been served on the 8th day after deposit with Canada Post. The day of deposit is not counted for this purpose. Therefore, the 30 day time period will start on the 9th day after deposit with Canada Post.

- (8) The August 4, 2000 decision of the hearing chair was sent by registered mail to the employer on August 10, 2000. In accordance with Decision #27 and section 221 of the Act, the employer is deemed to have received the decision on August 19, 2000. Therefore, the employer must have filed its appeal by September 18, 2000 to meet the 30-day time requirement in the Act. The employer's November 3, 2000 application was approximately six weeks late.
- (9) The Appeal Division can do only what the Act allows it to do. The case law on extending the time for filing an appeal is virtually unanimous that an appeal body has no authority to extend the time in the absence of express authorization in the Act. No such authorization exists in the Act for administrative penalty matters.
- (10) Considering the mandatory 30-day requirement for filing an appeal of an administrative penalty and the fact that the Appeal Division has no jurisdiction to consider an appeal that is filed beyond the 30-day statutory time period, I must deny the employer's request for an extension of time.

## Conclusion

- (11) The employer's request for an extension of time to appeal the August 4, 2000 decision of the hearing chair is denied. The Appeal Division, therefore, will not consider the employer's appeal. The hearing chair's decision with respect to the employer's violation of Occupational Health and Safety Regulation section 20.75 and the imposition of an administrative penalty in the amount of \$4,500 remains in effect.