

# REPORTER

## Decision of the Appeal Division

**Number:** 92-0626  
**Date:** March 17, 1992  
**Panel:** Connie Munro, Chief Appeal Commissioner  
**Subject:** Application for an Extension of Time

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This is a request by a worker for an extension of time to appeal a Review Board finding dated November 2, 1988. The Notice of Appeal and Extension of Time request were received by the Appeal Division on January 3, 1992. At the time of the Review Board findings, the time limit to appeal was 60 days. The worker is currently represented by a workers' adviser.

The worker, a hairstylist, fell from a stool onto her elbow and tailbone on October 9, 1986. Her claim was accepted but no wage loss or medical expenses were payable. The issue considered by the Review Board in the finding of November 2, 1988, was whether the worker's symptoms of late 1987 and subsequent surgery in March 1988 were causally related to the compensable work injury of October 9, 1986.

The submission on the worker's behalf states that at the time of the Review Board hearing the worker's representative was a union business agent. He did not file an appeal of the Review Board finding, and according to the worker, had told her that she could appeal their finding at any time. The worker says she was under the impression that the union continued to work on her claim until the spring of 1990, when she was forwarded her file and disclosure materials and was notified that the business agent had retired.

On May 3, 1990, another union representative wrote to the Board on the worker's behalf with an accompanying report from her doctor, to request a reconsideration. This was denied as was a similar request made on February 21, 1991. The worker was advised on both occasions that there was no new information upon which a reconsideration could be based. On March 13, 1991 the worker telephoned the Board and was told that she needed to appeal the Review Board findings dated November 2, 1988, and would require an extension of time to do so.

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On April 9, 1991 the worker requested disclosure of her claim file from the Workers' Compensation Board, but this was denied on June 6, 1991. The worker requested assistance from Jim Karpoff, M.P., who referred her to her M.L.A., Joan Smallwood. On the advice of Ms. Smallwood, the worker contacted the workers' adviser on December 3, 1991. It is not clear when this advice from Ms. Smallwood was obtained.

The workers' adviser submits that an extension of time to appeal should be allowed because these circumstances are exceptional, there is no prejudice to any other party as the worker was employed by her own company at the time of her injury, and failure to comply with the procedural requirement does not interfere with the Appeal Division's ability to reach a decision on the basis of the merits and justice of the case.

The factors taken into consideration in determining whether to grant an extension of time to appeal are outlined in Decision Number 1 of the Appeal Division, which provides the following (at p. 6):

The Chief Appeal Commissioner will determine whether an extension of time to appeal should be granted. The following factors will be considered in determining whether to grant an extension:

- (i) substantial and material new evidence has arisen or has been discovered subsequent to the Review Board hearing;
- (ii) exceptional circumstances prevented the party from initiating an appeal in time.

It would weigh against the granting of an extension of time to appeal if the party delayed in initiating an appeal after they became aware of the new evidence referred to in (i), or after the exceptional circumstances referred to in (ii) came to an end.

This list is not exhaustive and other factors may be taken into account. None will be considered determinative. . . .

A review of the file indicates that in late 1987, before the involvement of the union representative, the worker herself initiated a manager's review of her claim, followed by an appeal to the Review Board and a request for disclosure. She also communicated with the Board, both in writing and by telephone, for details as to the status of her appeal. Even after the union became involved the worker participated in her appeal by writing to the Review Board to request that her appeal be expedited due to financial difficulties.

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A copy of the Review Board finding was mailed to the worker on November 2, 1988. There was no further communication between the worker and the Board until the reopening request of May 3, 1990. The worker states that this lack of communication is a result of her belief that the union representative was actively pursuing her claim. From the time of the Review Board finding in November 1988, until the spring 1990, however, there is no documented evidence of communication between the worker and the union.

The worker says she believed that she could appeal the Review Board finding at any time, until she was advised otherwise by the Board. A note on file confirms that on March 13, 1991 the worker was told of the need to appeal the November 2, 1988 Review Board finding and that she was out of time and would need to request an extension. She was also given the telephone number for the workers' adviser. A Notice of Appeal and request for extension of time to appeal were not received until January 3, 1992, almost 10 months after this information was provided.

The failure of a representative to properly advise a worker could be considered an exceptional circumstance. The lack of evidence, however, of any communication between the worker and the union for approximately 18 months is troubling. The worker had, in the past, shown diligence in pursuing her own claim. In any event, those circumstances came to an end on March 13, 1991 when the worker was advised that there was a time limit to appeal the Review Board finding. Almost 10 months passed before a Notice of Appeal was received by the Appeal Division. The further delay weighs against the granting of an extension of time to appeal.

The workers' adviser submits that further medical evidence will be presented should the extension of time be allowed. The two reopening requests made in 1990 and 1991 were denied because the medical reports were considered to contain no new information upon which to reconsider any of the decisions previously made on the claim. It is submitted that "if there were substantial and material new evidence in this case, it appears that the adjudicator may have decided the reconsideration requests differently." No new evidence has been presented, however, or information provided as to what new evidence might exist. As a result, I cannot conclude that substantial or material new medical evidence has arisen or been discovered subsequent to the Review Board hearing.

In conclusion, the grounds upon which an extension of time to appeal will be granted have not been satisfied in this case. THE APPLICATION IS DENIED.

*Editors' note: This decision has been edited for publication.*

