

## Review Decision

**Subject:** Review Division Reference #503  
Board Decision Letter of October 22, 2001  
**Date:** March 31, 2003  
**Chief Review Officer:** Louise Logan

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The worker seeks an extension of the 90-day statutory time limit to request a review of the October 22, 2001 decision of the Workers' Compensation Board ("Board"). The statutory time limit expired January 27, 2002. This included the eight-day grace period for the mailing of decisions provided for in subsection 221(2) of the *Workers Compensation Act* ("Act"). The Review Division received the worker's request for review on March 5, 2003, 428 days beyond the statutory time limit to request a review.

The worker has also requested reviews of two subsequent decisions dated February 4, 2003 and February 20, 2003, both of which relate to the October 22, 2001 decision. The Review Division received those requests within the statutory time limit.

Subsection 96.2(4) of the Act authorizes the chief review officer to extend the time to file a request for review where special circumstances existed which precluded the filing of a request for review within the 90-day time period and where an injustice would otherwise result.

### Issue

At issue is whether special circumstances existed which precluded the filing of a request for review within the 90-day time period, and, if so, would an injustice otherwise result if an extension were not granted.

### Background

In a decision letter dated October 22, 2001, the Board granted a permanent functional impairment award to the worker for his left shoulder impairment. It was determined that the worker did not have a loss of earnings since he had returned to employment on a full-time basis (40 hours per week). The decision letter advised the worker that he had 90 days to commence an appeal to the former Review Board, if he wished to do so. The worker was unrepresented at the time.

On December 11, 2001, the worker's physician, Dr. A., provided a medical report (Form 11) to the Board. Dr. A. reported that the worker's shoulder was still symptomatic and that he had reduced his workweek to 32 hours. However, Dr. A. gave the worker the option of increasing his work hours if his shoulder improved.

There was no contact between the worker or his doctor and the Board until July 9, 2002, at which time Dr. A. provided another Form 11, advising that the worker continued to work 32 hours per week because he could not manage 40 hours per week.

The worker advised in a voice mail message to a Board officer on August 16, 2002 that he was still working 32 hours per week. He asked for “top-up” benefits at the same time.

On October 10, 2002, a Board officer rendered a decision that the worker’s file would not be referred to the Disability Awards Department for a reassessment of his pension because there was no evidence of a significant deterioration of his right shoulder condition.

The worker, who had been represented on a previous appeal to the Review Board by his union, again sought representation through his union. On November 4, 2002, a union representative asked the Board to review the worker’s claim, owing to the change in his employment status. A Board officer referred the representative to the October 10, 2002 decision.

The representative then wrote to the Disability Awards Department on January 7, 2003, asking for reconsideration of the October 22, 2001 pension decision.

In a letter dated February 4, 2003, the disability awards officer found there was no evidence that the worker’s right shoulder had significantly deteriorated since the time of his functional impairment evaluation. She concluded that the worker’s file would not be referred to the Disability Awards Department for a reassessment of his pension.

The worker has requested a review of the Board’s decision dated February 4, 2003 and a decision dated February 20, 2003, in which the worker was advised again that the Disability Awards Department would not be reassessing his pension.

## **Submissions**

The worker’s representative seeks an extension of time to request a review of the Board’s decision dated October 22, 2001. Her submission, dated February 8, 2003, reads, in part, as follows:

With respect to his failure to take any action with respect to the October 2001 pension decision letter, the worker states that he simply had no idea that there was anything he could do to change the pension decision. The worker is an immigrant from Portugal. Although he has been in Canada for many years, he is not sophisticated. He was operating under the impression that the monthly pension was all that he was entitled to for his injury. One of his coworkers finally suggested he contact the WCB and ask them to provide him with further compensation for his lost earnings, and the worker called the WCB in October 2002. The worker had no idea that this issue was covered by the October 2001 pension decision that he had already received, or that his vehicle for seeking compensation for his permanent reduction in working capacity was an appeal from that letter. We submit that his inability to understand the significance of the October 2001 pension decision is very reasonable, given his background and education.

## **Practices and Procedures**

Item B.3.2 of the *Review Division Practices and Procedures* provides guidance in determining whether to grant an extension of time. The chief review officer must first be satisfied that special circumstances existed which precluded the filing of a request for review within the 90-day time period. The chief review officer will only consider the applicant's reasons for not filing the request for review on time. No consideration is given to the merits of the request for review. If the applicant's reasons do not amount to special circumstances, no further consideration will be given to the extension request.

Where special circumstances are found to exist, the chief review officer will then consider whether an injustice would result if the time limit were not extended. It is only when it is found that both special circumstances exist and an injustice would otherwise result that an extension will be granted.

## **Decision and Reasons**

I find that the worker's reasons for not filing a request for review do not amount to special circumstances.

There are a number of factors to be considered when determining whether special circumstances existed, but two key factors are evidence of the worker's intention to request a review within the 90-day time limit and the length of delay.

With respect to the worker's intention to request a review, it is unlikely that he had any intent to do so prior to December 11, 2001 when he told his doctor that he was working reduced hours. The worker had been advised of his appeal rights at the time and he was well within the 90-day period to exercise those rights. Approximately eight months passed before the worker contacted the Board on August 16, 2002. This was the first indication that the worker intended to request a review of the Board's October 22, 2001 decision.

In response, the worker's representative submits that the worker is not sophisticated and unfamiliar with the process, and that he did not understand the significance of the October 22, 2001 decision.

In some cases, a worker's or an employer's sophistication can be a relevant factor, but the intention to request a review remains a key consideration. When an unsophisticated worker or employer expresses their dissatisfaction about a decision to the decision-maker within the 90-day review period, but lacks sufficient knowledge of the review process to make a timely request for review, a special circumstance may arise.

In this instance, however, the worker did not voice his objection within the 90 days. If the worker had difficulty understanding the significance of the October 21, 2001 decision letter, he was aware that he could seek representation either through his union or elsewhere, as he had done in the past.

Without any indication before August 16, 2002 that the worker was dissatisfied with the Board's decision of October 22, 2001, I am unable to find that special circumstances precluded the worker from requesting a review until March 5, 2003. There is, therefore, no need to determine whether an injustice would otherwise result if an extension of time were not granted.

**Conclusion**

I deny the worker's application for an extension of time to file the request for review.

**PLEASE NOTE:**

Pursuant to section 4 of the *Workers Compensation Act Appeal Regulation*, this decision may not be appealed to the Workers' Compensation Appeal Tribunal.