

Tribunal de santé et
sécurité au travail Canada



Occupational Health
and Safety Tribunal Canada

Ottawa, Canada K1A 0J2

Date: 2014-06-06
Case No.: 2014-05

Between:

Kevin Bansfield, Appellant

and

Correctional Service of Canada, Respondent

Indexed as: *Bansfield v. Correctional Service of Canada*

Matter: Request for an extension of time to file an appeal under subsection 129(7) of the *Canada Labour Code*

Decision: The request is denied

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the Appellant: Ms Sheryl Ferguson, CSN Advisor, UCCO-SACC-CSN

For the Respondent: Mr Richard Fader, Senior Counsel, Department of Justice Canada, Labour and Employment Law Group

Citation: 2014 OHSTC 8

Canada

REASONS

[1] This matter concerns a request for an extension of time to file an appeal pursuant to subsection 129(7) of the *Canada Labour Code* (the Code). The appellant, Mr Kevin Bansfield, is requesting to be relieved of his failure to file an appeal of a decision that a danger does not exist rendered by Health and Safety Officer (HSO) Bobbi Anderson on February 6, 2014, within the 10-day statutory time limit set out in the Code.

Background

[2] On December 16, 2013, Mr Bansfield, correctional officer at the Grand Valley Institution for women and employed by the Correctional Service of Canada, initiated a work refusal pursuant to subsection 128 of the Code when he was assigned to escort a medium security inmate to Toronto to attend a scheduled court appearance without being provided with OC spray. Mr Bansfield believes that because the inmate in question lives in the medium compound area of the institution where all staff conducting the Shared Unit Supervision (Patrol post) are now permitted to carry OC spray on their person, OC spray should also form part of the equipment used for the security escort.

[3] On January 10, 2014, HSO Anderson attended the work place in order to conduct her investigation into the work refusal. HSO Anderson rendered her decision that there is no danger associated with performing the medium security escort on February 6, 2014. Her decision was communicated in writing by a letter hand delivered to the parties on the same day.

[4] Mr Bansfield filed a request to appeal HSO Anderson's decision on February 24, 2014, more than seven days after the expiration of the prescribed time limit to do so. Having been notified of HSO Anderson's decision on February 6, 2014, Mr Bansfield had until February 17, inclusive, February 16 falling on a Sunday, to file his appeal pursuant to section 129(7) of the Code. On February 25, 2014, the Occupational Health and Safety Tribunal Canada (Tribunal) informed Ms Sheryl Ferguson, the representative of the appellant, of the lateness of the appeal and the appellant's rights to request an extension of time to file the appeal. On March 5, 2014, Ms Ferguson filed a request for an extension of time to file the appeal and presented submissions in support of the request.

Issue

[5] The question that I must address is whether I should, in the present matter, exercise the discretion conferred upon me by paragraph 146.2(f) of the Code, to extend the time limit of 10 days set out in subsection 129(7) of the Code.

Submissions of the parties

[6] The appellant's representative, Ms Sheryl Ferguson, submits that the reason for the lateness in filing the appeal was a result of the local representative's error in calculating the date and that Mr Bansfield should not have his right to appeal HSO Anderson's decision terminated, as a result of the local representative's miscalculation. She therefore, requests that the extension of time request be granted and the appeal be allowed.

[7] The respondent took no position in opposition to the appellant's request for an extension of time.

Analysis

[8] The question that I must address is whether I should exercise my discretion under paragraph 146.2(f) of the Code in favour of extending the time limit for filing the appeal and relieve Mr Bansfield of his failure to present an appeal within the prescribed time limit. Paragraph 146.2(f) provides as follows:

146.2 For the purposes of proceedings under subsection 146.1(1), an appeals officer may

[...]

(f) abridge or extend the time limit for instituting the proceeding or for doing any act, filling any document or presenting evidence;

[9] Although an appeals officer may, pursuant to paragraph 146.2(f) extend the time limit to file an appeal, such an extension is not automatic. An appellant must be able to demonstrate that it has an exceptional reason that could justify the delay. Moreover, the Code does not prescribe the factors that an appeals officer ought to consider when exercising his discretionary powers to extend time limits. Appeals officers have, as well as other administrative tribunals, typically considered the following factors in the exercise of their discretion: the length of the delay in relation to the appeal period, the explanations given by the party to explain the delay, the due diligence shown through that party's actions, and the prejudice suffered by the other parties to the proceedings.

[10] After having considered the circumstances of this case, although I do not see how an extension of time could prejudice the respondent, who, moreover, has not complained of any prejudice, I find that the discretion to grant the extension of time should not be exercised in favour of the appellant for the reasons that follow.

[11] To start with, the only justification provided to me by the appellant in this case is the error made by the union local representative. However, I do not find that explanation compelling given the length of the delay in filing the appeal. As mentioned earlier, the appeal was received by the Tribunal seven days after the 10-day time limit had expired. It is the appellant and his representative's responsibility to find out what the time limit is for filing an appeal with the Tribunal. That information is available on the Tribunal's website or by contacting directly the registrar of the Tribunal. Moreover, the appellant and his representative are also responsible to ensure that an appeal is filed within the prescribed deadline. I note that the letter containing the decision of HSO Anderson that was given by the appellant did indicate the prescribed timeline to file an appeal with the Tribunal. Therefore, the appellant has not demonstrated to my satisfaction that there were exceptional circumstances for failing to file his appeal in time. Additionally, I find that the appellant has not established to me that his actions indicated an intention of filing an appeal within the prescribed deadline.

Decision

[12] For these reasons, the request for an extension of time to file the appeal is denied. The appeal is hereby dismissed.

Michael Wiwchar
Appeals Officer