

**Date: 20080827**

**Docket: 08-A-58**

**Citation: 2008 FCA 249**

**Present:     SEXTON J.A.**

**BETWEEN:**

**DORIS MUCKENHEIM**

**Applicant**

**and**

**EMPLOYMENT INSURANCE COMMISSION**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on August 27, 2008.

**REASONS FOR ORDER BY:**

**SEXTON J.A.**

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**REASONS FOR ORDER**

**SEXTON J.A.**

[1] The applicant brings this motion to extend the time to bring an application for judicial review under section 28(1) of the *Federal Courts Act*. She seeks review of two decisions of the Umpire, known as CUB 67888 and CUB 67889.

[2] The Umpire's decisions concern an overpayment of Employment Insurance (EI) premiums to the applicant. There was no dispute that there was an overpayment; the issue was the amount of that overpayment. The only issue before the Umpire was the allocation of the applicant's earnings. In identical decisions issued April 3, 2007, the Umpire found that there was no reason to interfere with the allocation made by the Employment Insurance Commission.

[3] The applicant applied for reconsideration of the Umpire's decisions, which was denied on July 18, 2007 (those decisions are known as CUB 67888A and CUB 67889A).

[4] Instead of applying to this court for judicial review, the applicant attempted to resolve the dispute "informally" through communications between October 2007 and July 2008 with various government agencies, including Service Canada, her M.P., and the office of the Minister of Human Resources and Social Development.

[5] The applicant served her motion record on the respondent on July 25, 2008.

[6] Section 18.1(2) of the *Federal Courts Act* states:

**18.1** (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

**18.1** (2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

[7] The applicant has not stated when she received the Umpire's initial decisions; the respondent submits that the Commission received them on April 17, 2007, and that it is reasonable

to assume that the decision would have been communicated to the applicant on or about the same date. Accordingly, the applicant should have filed her application for judicial review on or before May 17, 2007. Regardless of the precise date, it is clear that the applicant is approximately fourteen months out of time.

[8] The decision whether to grant an extension of time is a discretionary one. This court has set out the principles that should guide the exercise of that discretion in *Canada (Attorney General) v. Hennelly* (1999), 167 F.T.R. 158:

The proper test is whether the applicant has demonstrated:

- a. a continuing intention to pursue his or her application;
- b. the application has some merit;
- c. that no prejudice to the respondent arises from the delay; and that a reasonable explanation for the delay exists.

[9] Unfortunately, the applicant has not provided a reasonable explanation for her delay in bringing her application. Over the course of her attempts to resolve this issue “informally”, it was unequivocally communicated to her in writing on three separate occasions—on October 31, 2007, November 19, 2007, and December 20, 2007—that the proper avenue was to seek judicial review of the Umpire’s decision to this court. She was also advised that she may need to apply for an extension of time. In correspondence dated February 21, 2008, the applicant indicated that she was “currently preparing an appeal to the Federal Court of Appeals [sic]”, demonstrating her awareness that this was the proper course. Yet she did not initiate this motion until July 25, 2008, some five months later. I cannot find that this delay was reasonable in the circumstances.

[10] I am also not convinced that the applicant has demonstrated the merit of the underlying application; she has not presented any evidence or submissions to suggest that the Umpire may have made a reviewable error in his decisions. On the other hand, the Commission has an interest in relying on the certainty and finality of the Umpire's orders (see *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883).

[11] Accordingly, the applicant has not met the test for an extension of time and this motion is dismissed. Neither party sought costs and none will be awarded.

"J. Edgar Sexton"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 08-A-58

**STYLE OF CAUSE:** *Doris Muckenheim v. Employment  
Insurance Commission*

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** Sexton J.A.

**DATED:** August 27, 2008

**WRITTEN REPRESENTATIONS BY:**

Doris Muckenheim

ON HER OWN BEHALF

Philippe Alma

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT