

Docket: 2003-2108(EI)APP

BETWEEN:

OSMAN ASHMAWY,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

---

Appeal heard on September 16, 2003 in Edmonton, Alberta  
By: The Honourable Justice Campbell J. Miller

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Elena Sacluti and Lesley Akst (Student-at-law)

---

ORDER

Upon application under subsection 103(1.1) of the *Employment Insurance Act* for an Order extending the time within which a notice of appeal may be instituted;

And upon hearing what was alleged by the parties;

The application is dismissed.

Signed at Ottawa, Canada, this 3rd day of December 2003.

"Campbell J. Miller"

---

Miller J.

Citation: 2003TCC899  
Date: 20031203  
Docket: 2003-2108(EI)APP

BETWEEN:

OSMAN ASHMAWY,

Applicant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR ORDER**

#### **Miller J.**

[1] Mr. Osman Ashmawy is applying for an extension of time to file an appeal with this Court, from the decision of the Minister of National Revenue (the "Minister") contained in a letter from Canada Customs and Revenue Agency ("CCRA") dated June 20, 2002. In that decision, the Minister determined that Mr. Ashmawy had acquired 210 insurable hours from February 12, 1996 to March 20, 1996. Mr. Ashmawy's view is that he acquired 336 hours, as stated by CCRA in their letter of January 9, 2002 to Mr. Ashmawy. Mr. Ashmawy has been consistent and dogged in his efforts to resolve this matter, yet by not filing his objection in the appropriate office, he may have lost his opportunity to be heard.

[2] It is helpful to provide a chronology of events in Mr. Ashmawy's dispute. By letter dated January 9, 2002, CCRA indicated to Mr. Ashmawy the following:

We received a request from the Department of Human Resources Development for a ruling regarding the insurability of your employment with Red Leaf Taxi Cab Ltd. for the period of February 12, 1996 to March 20, 1996.

...

We have determined that you had insurable earnings of \$2548.00 and 6 insurable weeks for the period under review (336 hours).

[3] By letter dated May 10, 2002,<sup>1</sup> from a CPP/EI Appeals Officer, Ms. Patricia Anderson, to Human Resources Development Canada ("HRDC"), the Appeals Officer confirmed that CCRA had received an appeal from HRDC and indicated they will be contacting HRDC. Attached to this letter was the same letter, but addressed to Mr. Ashmawy, unsigned, with a line through the letter and the words "not required" handwritten on it.

[4] By letter dated June 20, 2002, a Team Leader, Mr. Ronald Smith, for CPP/EI Appeals wrote to HRDC in part as follows:

It has been decided that Osman Ashmawy had acquired 210 insurable hours during the period under review.

Mr. Ashmawy indicated he had no input into that decision. He was away from Canada from several months, returning July 31, 2002. He received a copy of this letter on August 27, 2002 while at a Board of Referees. This was the first he knew of any appeal of CCRA's January 9, 2002 decision.

[5] On September 21, 2002, Mr. Ashmawy addressed a letter to CCRA at the same office in Edmonton from which the June 20, 2002 letter was sent. Mr. Ashmawy's opening sentence was:

Please consider the following facts as an appeal for the letter which was signed on July 24, 2002 by Ronald Smith. ...

[6] CCRA responded on September 24, 2002:<sup>2</sup>

This letter concerns your disagreement with the Ministerial decision dated June 20, 2002.

As you disagree with this decision, you can appeal to the Tax Court of Canada within 90 days of the date of the Ministerial decision.

[7] Mr. Ashmawy continued to deal with CCRA on this and another EI issue throughout the fall of 2002. On January 27, 2003, he wrote again to the Director of CCRA, Edmonton, appealing the June 20, 2002 decision of Mr. Smith. The letter

---

<sup>1</sup> Exhibit R-1.

<sup>2</sup> Exhibit R-2.

was received by CCRA on February 28, 2003. CCRA forwarded this letter to the Tax Court of Canada. The Tax Court of Canada corresponded with Mr. Ashmawy by letter of March 6, 2003, indicating that his time to appeal and to apply for an extension of time to file an appeal had expired, and that the Court did not appear to have authority to hear the matter.

[8] In a letter dated May 21, 2003, received June 3, 2003, from Mr. Ashmawy to the Tax Court of Canada, Mr. Ashmawy states:

Please consider this letter as a notice of appeal ...

[9] The relevant statutory provisions are as follows:

***Employment Insurance Act:***

- 91** An appeal to the Minister from a ruling may be made by the Commission at any time and by any other person concerned within 90 days after the person is notified of the ruling.
- 93(1)** The Minister shall notify any person who may be affected by an appeal of the Minister's intention to decide the appeal, including the Commission in the case of an appeal of a ruling, and shall give them an opportunity to provide information and to make representations to protect their interests, as the circumstances require.
- (2) An appeal shall be addressed to the Assistant Director of Appeals in a Tax Services Office of the Canada Customs and Revenue Agency and delivered or mailed to that office.
- (3) The Minister shall decide the appeal within a reasonable time after receiving it and shall notify the affected persons of the decision.
- (4) If the Minister is required to notify a person who may be or is affected by an appeal, the Minister may have the person notified in such manner as the Minister considers adequate.
- 103(1)** The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the *Tax Court of Canada Act* and the applicable rules

- (1.1) Section 167, except paragraph 167(5)(a), of the *Income Tax Act* applies, with such modifications as the circumstances require, in respect of applications made under subsection (1).

...

- (3) On an appeal, the Tax Court of Canada
- (a) may vacate, confirm or vary a decision on an appeal under section 91 or an assessment that is the subject of an appeal under section 92;
  - (b) in the case of an appeal under section 92, may refer the matter back to the Minister for reconsideration and reassessment;
  - (c) shall notify in writing the parties to the appeal of its decision; and
  - (d) give reasons for its decision but, except where the Court deems it advisable in a particular case to give reasons in writing, the reasons given by it need not be in writing.

***Income tax Act***

**167(1)** Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

...

- (5) No order shall be made under this section unless
- (a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and
  - (b) the taxpayer demonstrates that
    - (i) within the time otherwise limited by section 169 for appealing the taxpayer
      - (A) was unable to act or to instruct another to act in the taxpayer's name, or
      - (B) had a bona fide intention to appeal,

- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,
- (iii) the application was made as soon as circumstances permitted, and
- (iv) there are reasonable grounds for the appeal.

***Employment Insurance Rules***

- 5(1)** An appeal by an appellant from a decision on an appeal to the Minister shall be instituted within the time period set out in subsection 103(1) of the *Act* which is 90 days after the decision is communicated to the appellant, or within such longer time as the Court may allow on application made to it within 90 days after the expiration of those 90 days.
- (2) Where a decision referred to in subsection (1) is communicated by mail, the date of communication is the date it is mailed and, in the absence of evidence to the contrary, the date of mailing is the date specified on the decision.
- (3) An appeal referred to in subsection (1) shall be made in writing and set out, in general terms, the reasons for the appeal and the relevant facts, but no special form of pleadings is required.
- (4) An appeal shall be instituted by filing the original of the written appeal referred to in subsection (3) in the Registry.
- (5) The written appeal referred to in subsection (3) shall be filed
- (a) by depositing the original of the written appeal in the Registry;
  - (b) by mailing the original of the written appeal to the Registry; or
  - (c) by sending a copy of the written appeal by fax or electronic mail to the Registry.
- (6) The date of filing of a written appeal in the Registry is deemed to be the day on which the written appeal is received by the Registry.
- (7) Where a written appeal is filed in accordance with paragraph 5(c), the party who instituted the proceeding or that party's counsel or agent shall forthwith send the original of the written appeal to the Registry.
- (8) An appeal may be brought by a notice in the form set out in Schedule 5.

[10] The 90-day period for Mr. Ashmawy to appeal the June 20, 2002 decision expired on September 18, 2002, if one presumes that the letter addressed to HRDC, was also mailed to Mr. Ashmawy on that date. No such letter addressed to Mr. Ashmawy was produced. Mr. Ashmawy's evidence was that he first saw the June 20, 2002 letter, addressed to HRDC on August 27, 2002. While section 5 of the *Employment Insurance Rules* stipulates that the date of communication is the date of mailing, it is implicit that the letter must be addressed to the person to whom the decision is being communicated. I have no evidence of such letter to Mr. Ashmawy. I find that the date of communication in this case can, therefore, only be the date he received a copy of the letter addressed to HRDC which was not disputed to be August 27, 2002.

[11] The 90-day period for appealing, therefore, ran to November 25, 2002. Does this help Mr. Ashmawy as far as filing an appeal within 90-day period? No. He received guidance from CCRA in September, after they received his "appeal", that the appeal should be directed to the Tax Court of Canada. Despite ongoing dealings with CCRA which Mr. Ashmawy might have believed was dealing with the appeal, nothing was filed with the Tax Court of Canada until early March 2003. This was at the instigation of CCRA, who clearly were well aware Mr. Ashmawy wanted to appeal this matter.

[12] If I accept that Mr. Ashmawy's appeal period did not expire until November 25, 2002, then the time within which he could apply to the Court for an extension of time would be February 23, 2003. Nothing was received by the Tax Court of Canada until March 3, 2003. Even on this most favourable reading of the circumstances, Mr. Ashmawy is simply out of time for bringing this application.

[13] I did not rule immediately on this issue as I was disturbed by the lack of opportunity Mr. Ashmawy was given to present his position prior to the Minister's decision of June 20, 2002. Subsection 93(1) clearly stipulates the Minister shall give Mr. Ashmawy an opportunity to make representations to protect his interests. It would appear Mr. Ashmawy was not given any such opportunity. I therefore asked Respondent's counsel to consider and advise whether, as a Superior Court, the Tax Court of Canada could refer the matter back to the Minister for a redetermination in accordance with the requirements of subsection 93(1). The Respondent advised the Court of *Anderson v. Canada*, [2002] T.C.J. No. 382, in which the Court heard an application for an extension of time pursuant, in part, to subsection 103(1) of the *Employment Insurance Act*. In that case, the decision of the Minister was communicated by way of letter dated May 16, 2000. The

Applicant argued that the Court had an inherent jurisdiction to extend the time beyond that permitted under the applicable statutes because the applicant "had not been given a hearing" and as such he had been denied natural justice. The Court commented as follows:

If what [the Applicant] seeks is an extension of time for appealing the Minister's decision... I cannot help him. ...Whatever inherent jurisdiction this court may have it does not extend to ignoring the time limits for appealing set out in the CPP and the EIA.

The Respondent further advised that the Court's status as a Superior Court does not change its jurisdiction with respect to strict statutory limits.

[14] I accept this advice and am compelled to dismiss Mr. Ashmawy's application. Under these circumstances, this Court cannot direct the Minister to provide Mr. Ashmawy with an opportunity to be heard.

[15] The application is denied.

Signed at Ottawa, Canada, this 3rd day of December 2003.

"Campbell J. Miller"

---

Miller J.



CITATION: 2003TCC899

COURT FILE NO.: 2003-2108(EI)APP

STYLE OF CAUSE: Osman Ashmawy and M.N.R.

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: September 16, 2003

REASONS FOR ORDER BY: The Honourable Justice Campbell J. Miller

DATE OF ORDER: December 3, 2003

APPEARANCES:

For the Applicant: The Applicant himself

Counsel for the Respondent: Elena Sacluti and  
Lesley Akst (Student-at-law)

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm: N/A

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada