

WORKERS COMPENSATION APPEAL TRIBUNAL

BETWEEN:

**[PERSONAL INFORMATION]
CASE ID #[PERSONAL INFORMATION]**

APPELLANT

AND:

**WORKERS COMPENSATION BOARD OF
PRINCE EDWARD ISLAND**

RESPONDENT

DECISION #253

Appellant

Nicole McKenna, Worker Advisor,
representing the Worker

Respondent

Stephen Carpenter, Solicitor representing the
Workers Compensation Board

Place and Date of Hearing

June 13, 2017
Rodd Royalty Charlottetown
14 Capital Drive
Charlottetown, Prince Edward Island

Date of Decision

November 1, 2017

Facts

1. This is an appeal arising from a decision of the Internal Reconsideration Officer ("IRO"), IR # [PERSONAL INFORMATION], dated November 17, 2014 which denied the Appellant's request that his claim filed with the Board on April 7, 2014 be accepted.
2. The Appellant completed a Worker's Report of Accident, Form 6, on October 3, 2013 in relation to a workplace injury on September 25, 2013 to his right wrist while [PERSONAL INFORMATION]. The Appellant is a [PERSONAL INFORMATION] where he works as a [PERSONAL INFORMATION].
3. The Employer's Report of Accident, Form 7, was dated October 3, 2013 and confirmed the date of injury as September 25, 2013.
4. Although the Forms 6 and 7 were completed by the Appellant and his Employer on October 3, 2013, they first had to be submitted to Employment and Social Development Canada ("ESDC") as part of the federal government claims filing process. These were submitted to ESDC shortly after the incident and again re-submitted on March 4, 2014 by facsimile.
5. By letter dated August 13, 2014 the Appellant was advised that his claim was denied as it had been filed beyond the six month limitation period for the filing of claims prescribed in the Board Policy POL-90 – Time Frame Limitations for Claims Filing and Invoicing.
6. A Request for Internal Reconsideration of the August 13, 2014 decision was filed by the Appellant on September 23, 2014.
7. The Appellant's Request for Internal Reconsideration was denied by decision of the IRO in a letter dated November 17, 2014.

Issue

8. Was the IRO decision of November 17, 2014 to deny the Appellant's claim on the basis that it was filed outside the six (6) month limitation period appropriate?

Appellant's Argument

9. The only issue in this appeal is whether the IRO should have denied the Appellant's claim on the basis that it was not filed within the six-month time limitation for claims filing set out in Board Policy POL-90.
10. *The Workers Compensation Act*, R.S.P.E.I. 1988, c W-7.1 ("Act"), does address the time frame for the filing of claims in subsection 59(4):

59(4) Compensation is not payable unless the claim for compensation is made within six months of the happening of the accident or, in case of death, within six months from the time of death.

11. The Board has also implemented a time limitation on claims filing in its Policy POL-90, which provides as follows:

1. A Worker must submit a Worker's Report of Accident (Form 6) within six (6) months of the date of the work-related accident. A Worker's Report (Form 6) that is not received by the Workers Compensation Board within six (6) months of the date of the work-related accident will not be accepted for adjudication.

12. As noted in the IRO decision, the federal *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (the "GECA"), which applies to the Appellant, does not contain any limitation period for filing of claims.

13. The IRO decision noted that in situations where the *GECA* is silent, such as with respect to a claims filing limitations period, the Supreme Court of Canada decision in *Martin v. Alberta* 2014 SCC 25 (CanLII) (2014-03-28) directs that provincial policy ought to be applied:

... the Commission was required to apply provincial law and policy to determine the entitlement to and rate of compensation for an employee governed by the GECA. The GECA incorporates provincial workers' compensation regimes, except where they conflict with the GECA. It creates an efficient and consistent system so that federal and other workers within a province are generally compensated at the same rates and under the same conditions. Where Parliament intended to impose different conditions, it has done so expressly...

14. The Appellant referred to a letter to the Board dated November 17, 2014; the Appellant's Area Supervisor outlined what had occurred to cause the delay in filing of the claim. The letter provides evidence of a facsimile transmission confirming the Appellant submitted the required forms to ESDC on March 4, 2014. The letter also outlines the process within the federal government is to forward such claim documents to ESDC and notes the sole reason why the claim was not filed sooner was due to inefficiencies within ESDC.

15. The Appellant argued that the IRO decision should be overturned and the Appellant's claim should be accepted by the Board. The failure to consider the Appellant's claim due to late filing is highly unfair and prejudicial to the Appellant as he is literally made to suffer a significant financial loss that is solely

the responsibility of his employer, when there is evidence that the Appellant submitted the required forms to ESDC within the limitation period.

Respondent's Argument

16. The Appellant's Form 6 and the Employer's Form 7 were received by the Board on April 7, 2014. The forms were referencing a workplace accident which occurred on September 25, 2013, approximately 6.5 months after the date of the accident.
17. There is a considerable body of WCAT and Court jurisprudence dealing with missed mandatory limitation periods prescribed under the *Act*.
18. The jurisprudence is consistent. This panel, as well as the Court, has consistently concluded that the limitation periods under the *Act* in terms of time lines for filing claims, filing appeals or requests for reconsideration are mandatory and cannot be extended. The reason being that WCAT is a creature of statute, and it is bound by the *Act*, including the limitation periods, and cannot extend these limitation periods or deviate from legislation without express legislative authority.
19. The Respondent submitted that the Appellant's claim is barred as the claim was filed outside the six (6) months limitation period as prescribed by Section 59(4) of the *Act* and POL-90, Section 1. This is an unfortunate situation, and the Appellant has made a case in his materials before this Tribunal as well as in advance of his IRO decision as to why the time limitation should be extended. However, as reflected in years of consistent jurisprudence the Board simply has no discretion when it comes to extending the statutory time limits. The Board is bound by these time limits, just as this panel is also bound.

Decision

20. The Tribunal allows the appeal for the reasons that follow:
21. The Tribunal notes that Policy POL-90 is clear that a worker must submit a Worker's Report (Form 6) within six (6) months of the date of accident, and if it is not received, it will not be accepted. It has also considered POL-140 "Federal Government Employees", which describes how claims for federal government employees in Prince Edward Island are adjudicated.
22. The Appellant argues that his claim should be accepted in this case as there are special circumstances which ought to have been taken into consideration by the IRO.

23. While the Respondent points to years of consistent jurisprudence that there is no discretion when it comes to extending statutory time limits; the Tribunal agrees that there is no statutory authority to extend time limits for filing under the Act. However, the Tribunal does not view this case as one which requires the extension of a time limit.
24. In reaching this conclusion, the Tribunal has considered the POL-121 "Policy Development and Maintenance" which states at para. 3:
- 3. The Workers Compensation Board recognizes that policies may not address every situation that may arise in applying the provisions of the Workers Compensation Act and the Occupational Health and Safety Act. When the policies do not provide direction in a given situation or when the situation is unique or unanticipated when the policy in question was established, the Workers Compensation Board will use good judgement in its decision-making.*
25. The Tribunal has also considered POL – 62, at para. 1, which states:
- 1. The decisions of the Workers Compensation Board are made in accordance with the real merits and justice of a case. The Workers Compensation Board is not bound to follow strict legal precedent. In determining the merits and justice of a case the Workers Compensation Board must consider:*
- *all relevant information relating to the case in order to establish the facts and circumstances;*
 - *relevant provisions of the Workers Compensation Act and Regulations; and*
 - *relevant Workers Compensation Board policies.*
26. The GECA scheme is unusual and unique in that a worker is not physically permitted to submit his or her Form 6 directly to the PEI Workers Compensation Board. Therefore, for the purpose of establishing compliance with the limitation period, the Appellant has no control over when ESDC provides the forms to the provincial jurisdiction. As stated in POL-121 when a unique or unanticipated situation that was not likely contemplated when drafting the policy in question, good judgment must be used in decision-writing. In accordance with POL-121, the Tribunal finds that POL-90 was not drafted to reflect the realities faced by federal government employees, and therefore, good judgment must prevail in accepting March 4, 2014 (the date of re-submission to ESDC) as the date of submission and receipt of the Forms, which should be interpreted to have satisfied the limitation period. As such, the Tribunal finds that the claim was made within the timeframes and no extension of time is required.

27. Accordingly, this Tribunal allows the Appellant's appeal and returns the matter to the Board for adjudication of appropriate benefits to the Appellant.
28. We thank counsel for their materials and submissions.

Dated this 1st day of November, 2017.

Meaghan S. Hughes, Vice-Chair
Workers Compensation Appeal Tribunal

Concurred:

Donald Turner, Employer Representative

Elizabeth (Libba) Mobbs, Worker Representative