



LRB File No. 075-20

IN THE MATTER OF: An appeal with respect to the decision of an Occupational Health and Safety Officer's decision dated April 2, 2020 pursuant to Section 3-53 of *The Saskatchewan Employment Act*.

BETWEEN:

KW

APPELLANT

-and-

GNC Bioferm Inc.

RESPONDENT

-and-

Director of Occupational Health and Safety
Ministry of Labour Relations and Workplace Safety

RESPONDENT

Preliminary Issue Regarding Timeliness of Appeal and Jurisdiction

1. The Appellant, KW, has appealed the April 2, 2020 decision of the Occupational Health and Safety ("OH & S") officers (the "Decision"). The Decision was regarding the written complaint made by KW to OH & S on January 14, 2020 (the "Written Complaint").
2. The Decision was appealed by Ms. Woroniuk by a letter in writing dated April 23, 2020.
3. Following my appointment as an adjudicator both parties were contacted to arrange for pre-hearing conference calls which were held on September 16, 2020 and October 15, 2020.
4. The purpose of the conference call on September 16, 2020 was to address the following agenda items:
 - (a) Efforts of the parties, if any, of resolving the issue and exploring alternative process options for resolution;
 - (b) Review of hearing process;
 - (c) Confirmation of issue(s) on appeal;
 - (d) Disclosure in advance of the hearing;
 - (e) Date and Location for the Hearing; and

- (f) Any other preliminary matters.
5. In regard to item (d) we discussed disclosure of the file received by me which contained the full record from the Harassment and Discriminatory Action Prevention Unit of OH & S. BC raised an objection to certain documents being disclosed and I had indicated I would give this further consideration prior to disclosure of the file contents from OH & S.
 6. In follow up to this request, both parties were requested to make further submissions via conference call scheduled for October 15, 2020. Both parties participated in this conference call and made submissions on this issue during the call. I indicated I would provide both parties with a decision on this issue. The hearing was scheduled for October 29, 2020.
 7. In the process of moving the matter forward with the parties and dealing with disclosure of the file record provided by OH & S another preliminary issue of timeliness of filing of the appeal was identified by me.
 8. On October 20, 2020, I sent an email to OH & S, with a cc to both parties, to confirm when the notice of appeal by KW was filed. Attached to the email were the following:
 - (a) Decision letter dated April 2, 2020 with attached Canada Post Tracking number reference
 - (b) Copy of the Notice of Appeal which had a date "RECEIVED" stamp by OH & S of May 4, 2020 as well as an "E-Mailed" stamp (the "Appeal")
 9. The parties were notified by email on October 20, 2020 that the hearing of October 29, 2020 was adjourned to allow time for this further preliminary issue to be addressed.
 10. An email response was received by Ms. Karla Kobayashi, Administrator and Appeal Registrar of OH & S on October 21, 2020. According to this email response:
 - (a) The date the appeal was received was May 4, 2020
 - (b) The date of service of the Decision was April 9, 2020.
 11. This email was forwarded to both parties and a follow up pre-hearing conference call was scheduled for October 29, 2020 at 9:30 a.m. to provide the opportunity for both parties to make any submissions respecting the preliminary issue of whether the appeal was filed on time by KW.
 12. KW stated that the Appeal was mailed by her on April 24th and points out it was postmarked April 24th. KW submits the filing deadline was April 29th and her mailing it by April 24th was sufficient. KW states that she did not have control over the mail.
 13. BC on behalf of the Respondent indicated that it appears the Appeal was filed late if it was received by OH & S on the date stamped on the letter, being May 4, 2020.

Issues and Analysis:

14. The preliminary issue for me to determine is whether the Appeal was filed on time. If it was not, I must determine the affect this has on my jurisdiction to hear this appeal.
15. Section 3-53 of *The Saskatchewan Employment Act* outlines the procedural requirements for filing of an appeal. It provides as follows:

3-53(1) A person who is directly affected by a decision of an occupational health officer may appeal the decision.

(2) An Appeal pursuant to subsection (1) must be commenced by filing a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.

(Emphasis added)

16. The Decision was sent by OH & S by registered mail to KW and the Canada Post tracking which was included as part of the OH & S file indicated it was delivered on April 9, 2020. This was confirmed by Ms. Kobayashi in her email October 21, 2020 email where she stated the date of service of the notice of the decision was April 9, 2020. KW did not dispute this. Based upon the file records and the email from Ms. Kobayashi I accept the date of service of the decision being appealed to be April 9, 2020. This would result in a deadline of Friday, May 1, 2020 for filing a written notice of appeal.
17. I also accept based upon the May 4, 2020 date "RECEIVED" stamp on the written Appeal filed by KW and the email confirmation by Ms. Kobayashi that the date the appeal was received by OH & S was May 4, 2020. This is outside the 15 business day filing deadline.
18. I have considered KW's argument that putting the envelope in the mail on April 24, 2020 was sufficient to meet the filing deadline. This issue was considered by the Adjudicator in *Jeff Romfo v. City of North Battleford* LRB File No. 005-19. In paragraphs [12] and [13] of that decision the Adjudicator stated:

[12] In its written submissions, the City contends "that section 3-53(2) requires the appeal to be delivered to the Director of Occupational Health and Safety by the deadline, not that it be "in the mail". It further provided the following definitions and citations with respect to the meaning of "file":

The definition of "File" within *The Dictionary of Canadian Law*, 3d ed (Toronto: Thomson Carswell, 2004) is:

1. To leave with the appropriate office for keeping. 2. Register. 3. **Requires actual delivery. A mailed document is not filed until received by the appropriate party.** [Emphasis added]

The definition of “file” within Black’s Law Dictionary, 8th ed (St. Paul: Thomson Reuters, 2014) included:

1. To **deliver** a legal document to the court clerk or record custodian for placement into the official record. <Tuesday is the deadline for filing a reply brief> [Emphasis added]

[13] I accept both definitions set out above and find that the term “file” indicates a positive duty to deliver to the appropriate office. While the method of delivery remains the choice of an appellant, the obligation to ensure delivery to the appropriate office is the appellant’s responsibility. In this case, the Appellant chose to mail the Notice of Appeal in the hope that it would reach its intended destination within the relevant timeframe. As such, he accepted a risk that delivery might not be effected by the statutory deadline.

19. I find the same analysis applies to this case. It was not sufficient for KW to mail the written notice of appeal within the 15 days. By doing so she took the risk it would not arrive at the office of OH & S by the filing deadline. It arrived on May 4, 2020. It was not filed on time.
20. Furthermore, I do not have jurisdiction to extend the time line for filing the Notice of Appeal. The authorities on this issue were canvassed in a decision of the adjudicator in *Brady and Jacobs Industrial Services Ltd. Re* [2016 CarswellSask 481 (Sask. L.R. B.)] In *Brady*, the Adjudicator summarized the applicable law as follows at paragraph [53]:

When the *Saskatchewan Employment Act* came into effect, the case law was clear that time limits are interpreted as mandatory and relief against failure to meet a time limit is not available unless expressly stated in the *Act*. If the legislature intended there be any relief from the time limit for appeal in s. 3-53(2), it could easily have included an express provision. Indeed, where the legislature intended to provide jurisdiction to waive or extend time limits, it did do so expressly. For example, s.6-49(3)(f) gives an arbitrator power to relieve against breaches of time limits in collective agreements. Similarly, s. 2-93 grants specific authority for the Court of Queen's Bench to extend the time for making an application to set aside an order or judgment. The legislature did not give any similar power to an adjudicator or to anyone else in the case of an appeal under s. 3-53, and I have no authority to imply such authority.

21. The *Brady* decision was referred to by the Court of Appeal in *Pruden v. Olysky Limited Partnership* 2018 SKCA 75 (Sask. C.A.) as correctly stating the applicable authorities on this issue. Based upon these authorities I do not have jurisdiction to hear this appeal.

Conclusion

22. The Appellant did not file her written notice of appeal within the required time limit. I have no authority to extend the deadline and therefore, I have no jurisdiction to hear this appeal. The appeal is therefore a nullity.

Issued on November 13, 2020

A handwritten signature in dark ink, appearing to read 'Darlene N. Wingerak', written over a horizontal line.

Darlene N. Wingerak
Adjudicator