

Canada Labour Code
Part II
Occupational Health and Safety

Douglas Emter
applicant

and

Department of National Defense
employer

Decision No. 04-038
November 4, 2004

This case was decided by Pierre Rousseau, appeals officer.

- [1] On October 21, 2004, Mr. Douglas Emter, Fire Fighter, Platoon Chief (Civilian Employee), appealed the decision of no danger issued by health and safety officer Kim Beattie following his refusal to work. Mr. Emter refused to undertake the Fire Fighter Physical Fitness Maintenance and Evaluation Program test. Health and safety officer Beattie wrote to Mr. Emter explaining the reasons of his decision in a report he sent him on September 15, 2004. When consulting the documentation on file, Mr. Emter indicates that he received his copy of the decision in the first week of October.
- [2] Subsection 129(7) of the *Canada Labour Code* Part II (the *Code*), mentions that the employee or a person designated by the employee for the purpose, may appeal the decision in writing to an appeals officer within ten days after receiving notice of the decision.
- [3] Mr. Emter appealed health and safety officer Beattie's decision by sending him a fax on October 21st, 2004 more or less one month after he had received the decision.
- [4] Nonetheless, the appeals officer has the power pursuant to paragraph 146.2(f) in the interest of justice to:

“abridge or extend the time for instituting the proceeding or for doing any act, filing any document or presenting any evidence;”.

- [5] Mr. Emter justified his appeal by the 3 following items:
1. “The (sic) stability and strength of the brace used for the ladder climb is unsafe.
 2. The testing site has never been set up in a permanent location. It is being set up for weekends and taken down for the work week.
 3. I still feel that without medical staff on hand and with a 10 to 15 minute time frame for the Wainwright Ambulance to respond to any incident during the test may cause me grave danger.”
- [6] I do not find Mr. Emter’s arguments to be sufficient grounds for me to authorize a time extension for instituting the proceeding and conduct a hearing in the case.
- [7] Based on the scant facts provided to me in this case, I find that this appeal has exceeded the 10 days requested by the *Code* and it is therefore not receivable. I confirm that the file on this matter is closed.

Pierre Rousseau
Appeals Officer

Summary of Decision

Decision No.: 04-038

Applicant: Doug Emter

Employer: Department of National Defense

Key Words: Decision, refusal to work, time limit

Provisions: *Code* 129(7)
Regulations

Summary:

The applicant appealed a decision of no danger issued by a health and safety officer, following a refusal to work. The applicant made his appeal 20 days after he received a copy of the decision. Finding the arguments not sufficient, the appeals officer refused to extend the period and closed the file.