

Docket: 2006-1529(EI)

BETWEEN:

CARLOS GUEVARA, a/t ABC SERVICES,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on January 30, 2007, at Winnipeg, Manitoba.

Before: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant:	Carlos Guevara
Counsel for the Respondent:	Julien Bédard

ORDER

Upon the motion by the Respondent concerning the period of 2000 and 2001 and seeking to obtain:

- a. dismissal of the Notice of Appeal;
- b. alternatively, a period of 60 days to file the Minister's Reply to the Notice of Appeal;
- c. any reparation sought by the Respondent or that the Tax Court of Canada (the "Court") finds appropriate and just in the circumstances;

And upon the affidavit filed by René Davidson and the allegations of the parties;

In accordance with the attached Reasons for Order, the motion is granted and the purported appeal is dismissed.

Signed at Ottawa, Canada, this 24th day of July 2007.

“C.H. McArthur”

McArthur J.

Translation certified true
on this 26th day of August 2007.
Gibson Boyd, Translator

Citation: 2007TCC434
Date: 20070724
Docket: 2006-1529(EI)

BETWEEN:

CARLOS GUEVARA, a/t ABC SERVICES,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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REASONS FOR ORDER

McArthur J.

Facts

[1] On June 26, 2002, the Minister of National Revenue (the “Minister”) mailed his decision under section 93 of the *Employment Insurance Act* (the “Act”) concerning the insurability of two workers.

[2] On May 16, 2006, the Appellant filed a Notice of Appeal with the Court.

[3] On October 27, 2006, the Respondent filed the Notice of Motion that the Court is seized of.

Reasons for motion

[4] Counsel for the Respondent submits that:

- a. The Court does not have jurisdiction on the subject of the appeal;
- b. An appeal cannot be made under section 103 of the Act given that the appeal was not filed within 90 days following the date when the Minister’s decision was communicated;

- c. The Appellant was not assessed following the decision in his favour that was communicated to him on June 26, 2002.

Provisions

Employment Insurance Act

Objection and review

Appeal to the Tax Court of Canada

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 of court made thereunder within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court allows on application made to it within 90 days after the expiration of those 90 days.

Extension of time to appeal

(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).

Communication of the decision

(2) The determination of the time at which a decision on an appeal to the Minister under section 91 or 92 is communicated to the Commission or to a person shall be made in accordance with the rule, if any, made under paragraph 20(1.1)(h.1) of the *Tax Court of Canada Act*.

Decision

(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.

Analysis

Is there a decision to be contested?

[5] On May 29, 2002, the Minister notified the Appellant that no official notice of assessment had been issued and that the right of appeal only exists when a notice of assessment has been issued. This letter is reproduced below:

[TRANSLATION]

CARLOS GUEVARA
ROSA GUEVARA VALLE
(ABC Services)
264 Eugenie St.
WINNIPEG, MB R2H 0Y4

May 29, 2002

Dear Sir:

In response to your letter of April 20, 2002, and your application to appeal the decision of July 6, 2001 (Auditor's account statement of July 6, 2001), we would like to inform you of the following:

The credit of \$579.22 was applied to the 2001 account.

The account indicating the balance of \$529.70 was never assessed by our computer system. As a result, no official notice of assessment was issued.

There is no right to appeal for the account statement for \$529.70 at this time.

A right of appeal only exists when a notice of assessment is issued.

If you have any questions, do not hesitate to contact the auditor, Dave Ivey, at (202) 983-8182.

Sincerely,

Paulette Martens
Appeals officer (EI/ CPP)

[6] During the hearing, counsel for the Respondent explained the reason why the notice of assessment was not issued:

Mr. BÉDARD:

[TRANSLATION]

The reason why there was never an assessment is because the amount was never collected. I do not know why. My understanding is that the officer from the Agency was on leave and his replacement did not proceed with that case or that audit. Regardless. There never was an assessment, there never were any funds collected, and the credit in the account statement was applied to Mr. Guevara's debt.

[7] Considering the facts, I am not convinced that there is a decision to contest in this case and, even if there was one, I think the motion should be granted for another reason.

Objection under section 103 of the Act

[8] Pursuant to subsection 103(1) of the Act, the Appellant had 180 days following the date of communication of the decision to file an application with the Court. The decision was communicated on June 26, 2002, and the Appellant therefore had until December 23, 2002, to file his application with the Court.

[9] It is clear that the Appellant did not respect the time limit and did not meet the requirements set out in subsection 103(1) of the Act by filing an appeal with the Court on May 16, 2006.

[10] René Davidson works as an officer for the Canada Revenue Agency (the "Agency"). He indicated in his affidavit that he was unable to confirm that the Appellant had served an appeal to the Court in the 90 days following the decision as required by section 103 of the Act. In addition, he was unable to confirm that the Appellant had made an application for extension of time to file his Notice of Appeal before the Court within 90 days after expiry of the 90 day period following the Minister's decision in accordance with section 103 of the Act.

[11] For these reasons, the motion is granted and the purported appeal is dismissed.

Signed at Ottawa, Canada, this 24th day of July 2007.

“C.H. McArthur”

McArthur J.

Translation certified true
on this 26th day of August 2007.
Gibson Boyd, Translator

CITATION: 2007TCC434

COURT FILE NO.: 2006-1529(EI)

STYLE OF CAUSE: CARLOS GUEVARA a/t ABC
SERVICES AND THE MINISTER
OF NATIONAL REVENUE

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: January 30, 2007

REASONS FOR ORDER BY: The Honourable Justice C.H. McArthur

DATE OF ORDER: July 24, 2007

APPEARANCES:

For the Appellant: Carlos Guevara
Counsel for the Respondent: Julien Bédard

COUNSEL OF RECORD:

For the Appellant:

Name:

Cabinet:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada