

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 522/10  
5312522

BETWEEN                      KERRY YVONNE CLARK  
   Applicant  
  
AND                                DEPARTMENT OF LABOUR  
   Respondent

Member of Authority:        Dzintra King  
  
Representatives:              Applicant in Person  
   Natasha Szeto, Counsel for Respondent  
  
Investigation Meeting:        On the Papers  
  
Submissions received:        16 August, 21 November 2010 from Applicant  
   1 December 2010 from Respondent  
  
Determination:                20 December 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Ms Kerry Yvonne Clark, wishes the Authority to review a decision of the Department of Labour pursuant to s71ZB of the Parental Leave and Employment Protection Act 1987 (“PLEPA”). The parties agreed that the matter could be dealt on the papers received and on additional submissions.

[2]     On 11 June 2010 the Inland Revenue Department received an application for a paid parental leave payment from Ms Clark as a self-employed person. Ms Clark specified that her parental leave commenced on 6 April 2009. She gave birth on 8 April 2009 and she returned to work in September 2009.

[3] Pursuant to s 71I (2) (a) a parental leave application must be made before the date on which the employee or self-employed person returns to work or the parental leave otherwise ends.

[4] Ms Clark returned to work in September 2009 but the application was not received until 11 June 2010.

[5] The respondent has the discretion to approve the making of a paid parental leave payment, despite an irregularity: s 71IA. The Department of Labour (“DOL”) declined to do so as it considered the delay was excessive.

[6] The Authority may grant relief if it thinks it is reasonable to do so, having regard to the nature of the irregularity, the good faith or otherwise of the parties and any other matters it thinks proper: s68 (5).

[7] Ms Clark said she was unaware that she had to submit her application within six months of the birth or prior to returning to work – whichever was the earlier.

[8] Ms Clark said her child was ill and she was distracted by that and so did not spend time getting information to her accountant until 14 December 2009. Her accounts were not prepared until May 2010.

[9] The application for leave was declined because it was made well after she went on parental leave, there was not a temporary absence from work caused by the birth of the baby and Ms Clark had returned to work before the application was submitted to IRD. The DOL considered that the fact that the application had not been received until June 2010 constituted a lengthy delay. At that stage there had been no specific explanation as to why it had taken her three months to provide her financial statements to her accountant nor why it took her accountant five months to prepare the accounts. In the Department’s view the extent of the irregularity was unreasonable and did not warrant the exercise of discretion.

[10] Ms Clark provided detail of her daughter’s illness and the care she needed.

[11] She had given her application for paid parental leave to her accountant before she gave birth to her daughter and had left the accountant to fill in all the relevant information. It wasn’t returned to her and she was not reminded about it. He did not

put her application through to IRD until May 2010. She was unaware it had to be returned before she went back to work.

[12] Regarding lack of awareness, the DOL commented that the note section of the application form requires applicants to read them prior to filling in the form and that it states that application for the payments must be made before a return to work or cessation of self employment.

[13] Ms Clark presumed that paid parental payments could be backdated. She submitted that if it had not been for her child's health issues she would have been in a position to collate all necessary information much earlier.

[14] I have a letter from the accountant in which he sets out the history of Ms Clark's accounts. The information required to complete the accounts was received at the office on 14 December 2009. For a number of reasons the accounts were not completed until 31 May 2010.

[15] As the accountant notes, by the time the information had been supplied for the preparation of the accounts, the time for making the application for paid parental leave had already lapsed.

[16] The delay is principally attributable to the difficulties Ms Clark had with the health of her child and the subsequent delays in organising the information to give to the accountant.

[17] While I have every sympathy for the parent of a sick child and can understand how concern for the child will take precedence over other activities, this needs to be weighed against the fact that there are criteria for the payment of parental leave. I am not satisfied that the delay was reasonable in all the circumstances of the case.

[18] I confirm the Department of Labour's decision that the delay was unreasonable and Ms Clark is not eligible for paid parental leave.

[19] There will be no costs.

Dzintra King

Member of the Employment Relations Authority