

Summary of LOWI decision 2016-03

Before LOWI can deal substantively with a request, it must first be decided whether the submission requirements set out in Article 7 of the LOWI Regulations have been met. One of those requirements is that a request must be submitted in good time, namely within six weeks of the date of the Board's (provisional) decision.

In the present case, the (provisional) decision is dated 7 December 2015. The covering letter with the decision is dated 9 December 2015. On the basis of that letter, Petitioner could take it that the submission period would only commence on 9 December 2015. Assuming that date, the request needed to have been received by no later than 19 January 2016. It was in fact received on 20 January 2016. The request was therefore not received in good time. The basic principle is that a request that is not submitted in good time will be declared inadmissible unless it cannot reasonably be found that Petitioner was in default.

Petitioner was given the opportunity to explain the late submission of the application. In that connection, Petitioner stated (briefly):

- that Petitioner had not sent the request himself because of serious illness, and had assumed that it would be sent in good time;
- that Petitioner was recovering from a number of major operations and was admitted to hospital on 17 December 2015 and on 7 January 2016, after which Applicant was for a number of days completely unaware of what was going on, for ten days could not use his hands, and for two weeks was unable to go out to go to the post office;
- that the duty of confidentiality meant that it was not possible to have someone else write the request;
- Petitioner offered to provide medical documentation as evidence.

The most relevant findings in LOWI's decision are given below.

- Any errors made by an assistant are for the account of Petitioner. The fact that the assistant sent the request a day later than that assumed by Petitioner does not make exceeding the deadline excusable;
- LOWI considers the hospital admissions and resulting physical limitations reported by Petitioner to be credible. Given the circumstances depicted by Petitioner, it is not in itself incomprehensible that not all his attention and energy was devoted to the decision and the steps to be taken in the light of that decision;
- Nevertheless, (serious) illness or hospitalisation does not in itself provide a reason for considering exceeding the deadline to be excusable, and the finding that Petitioner was (seriously) hampered in his normal functioning is also insufficient for this. It has not been shown that Petitioner was so ill throughout the six-week submission period that he was entirely unable to look after his own interests himself, or to have someone else do so for him;

- In the period between receipt of the decision on 10 December 2015 and the first hospital admission on 17 December 2015, Petitioner could have submitted a pro forma request and thus, without much effort, could himself have prevented the deadline being exceeded;
- Moreover, during part of the period between the first and second hospitalisation, it was reasonable to expect Petitioner to be able to do the minimum required to submit a (pro forma) request. Petitioner is also aware, from one of his previous LOWI procedures, that it is possible to supplement a request that has already been submitted;
- During the periods of hospitalisation, Petitioner could also have had himself assisted by a third party or represented by an authorised representative. The hospital admissions were not unexpected and the preliminary decision by the Board was also foreseeable, given that Petitioner had himself requested such by submitting a complaint. The possibility of assistance or representation is provided for in Article 3(5) of LOWI's Procedures [*Werkwijze LOWI*]. Contrary to what Petitioner asserts, the duty of confidentiality does not prevent this. Petitioner has conducted a number of LOWI procedures and is considered to be familiar with LOWI's Regulations and Procedures;
- There are no grounds for considering that exceeding the deadline was excusable, given that Petitioner's explanation does not show that there was a situation in which Petitioner was unable due to illness to take note of the provisional decision or was also entirely unable, throughout the submission period, to himself submit a request, if necessary on grounds to be asserted later, or was also unable to have himself assisted or be represented by an authorised representative.

The above means that the request is declared inadmissible. LOWI has not proceeded to substantive assessment of the request and has therefore not provided the Board with any substantive opinion on the final decision to be taken.

The Board decided on 31 March 2016 to confirm the provisional decision of 7 December 2015 as the final decision.