



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Minister of Employment and Social Development*, 2019 SST 692

Tribunal File Number: AD-19-470

BETWEEN:

R. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal and Decision by: Shirley Netten

Date of Decision: July 31, 2019

DECISION AND REASONS

DECISION

[1] The Application for leave to appeal is granted, and the appeal is allowed. The General Division decision is rescinded, and the appeal is returned to the General Division to be heard on the merits.

BACKGROUND

[2] In October 2017, R. B. (Claimant) appealed a decision that had denied her a Canada Pension Plan survivor's pension. The Tribunal's General Division granted an extension of time to appeal, in January 2018. The Claimant filed her Notice of Readiness on November 5, 2018, and sent in another letter on January 11, 2019. The communications between October 2017 and January 2019 indicated that the Claimant was spending time in Columbia as well as Toronto. She had provided a Toronto address, a Toronto phone number, a cell phone number, and two telephone numbers in Columbia.

[3] In late January 2019, the Tribunal sent a Notice of Hearing by Xpresspost to the Claimant's Toronto address. It was returned "unclaimed." On March 4, 2019, Tribunal staff made one unsuccessful effort to contact the Claimant by telephone, without specifying which number was tried. The Tribunal also sent the Claimant a letter by regular mail, asking her to contact the Tribunal to verify her address.

[4] On March 27, 2019, before any response was received from the Claimant, the General Decision issued a decision that concluded that the Claimant had abandoned her appeal. On April 3, 2019, the Claimant contacted the Tribunal, stating that she "just got back into the country." The call centre agent noted that the Claimant would send a letter to have her file re-opened, and she did so on April 4, 2019. However, the Tribunal subsequently informed her that the General Division had issued a final decision, and explained the appeal process. The Claimant then requested leave to appeal the General Division decision to the Appeal Division.

AGREEMENT

[5] A settlement conference was held in this matter, under section 17 of the *Social Security Tribunal regulations*. The parties have agreed that the Claimant's application for leave to appeal should be granted and that her appeal should be allowed on the basis that the General Division erred in concluding that the Claimant had abandoned her appeal.

[6] I accept this agreement on the basis that the outcome is consistent with the evidence and with the relevant provisions of the *Department of Employment and Social Development Act* (DESDA).

DISCUSSION

[7] The Appeal Division must grant leave (permission) to appeal unless the appeal "has no reasonable chance of success."¹ The grounds of appeal to the Appeal Division include a failure to observe a principle of natural justice, an error of law, and an erroneous finding of fact made without regard for the material before it.² I agree both that the Claimant had a reasonable chance of success in her appeal, and that the General Division erred, for the following reasons.

[8] It is questionable whether the General Division had the authority to dismiss the appeal based on a finding that the Claimant had abandoned her appeal.³ While the Tribunal has discretion over matters of procedure,⁴ the result here is substantive in nature, and it is not contemplated in the DESDA. Moreover, the Claimant was not given notice that her appeal could be dismissed as abandoned. In any case, even if there was such authority, the member's finding of abandonment was made without regard for the material before it. This is an error under section 58(1)(c) of the DESDA.

[9] In finding that the Claimant had abandoned her appeal, the member considered the fact that the Claimant had not claimed the Notice of Hearing and that she could not be reached by

¹ DESDA, ss 58(2) and 58(3)

² DESDA, s 58(1)

³ This result is different from an administrative file closure, which is not an adjudicative decision and permits the file to be reopened as required.

⁴ *Social Security Tribunal Regulations*, s 12; *Prasad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560

telephone. However, the member failed to address the fact that the Claimant divided her time between two countries (such that a failed personal delivery would not necessarily imply disinterest in the appeal), and that there was only one attempt to reach the Claimant by telephone, using only one of several numbers available, in March 2019. The member also emphasized the Claimant's failure to attend the hearing and provide an explanation, without acknowledging that at that time the Claimant had no knowledge of the hearing and so could not be expected to attend. Most importantly, the member failed to consider other evidence that overwhelmingly suggested that the Claimant wished to continue her appeal. Specifically, the Claimant had been in contact with the Tribunal about her appeal, by letter or by telephone, on 15 separate occasions between October 2017 and January 2019. She had recently filed her Notice of Readiness within the timelines provided to her, in November 2018. And, she had written to the Tribunal less than two weeks before the hearing was scheduled, explaining that her mail had been delayed due to the recent postal strike and stating (among other things) that her appeal was "very important for me." There was no substantial evidence before the General Division that demonstrated apathy on the part of the Claimant or a lack of interest in pursuing this appeal, and all avenues to locate the Claimant were not exhausted.

[10] I have agreed with the parties that the General Division made a mistake in finding that the Claimant had abandoned her appeal. The General Division decision is rescinded.⁵ Since the Claimant has not had an opportunity to be heard at the General Division, this appeal will be returned to the General Division where it is to proceed on the merits.

[11] In preparation, the parties have agreed that the Minister's representative will communicate directly with the Claimant to obtain additional information from her, with respect to her claim for the survivor's pension. The Minister's representative wishes to consider this information before providing updated submissions to the General Division. If this appeal proceeds to a hearing, the General Division is directed to hold the hearing in person, with a Spanish-speaking interpreter, when the Claimant is in Toronto (between early October and mid-December 2019, unless the parties are not ready to proceed at that time). In accordance with the Claimant's verbal direction, the General Division may communicate with the Claimant by email.

⁵ DESDA, s 59(1)

CONCLUSION

[12] The Application for leave to appeal is granted, and the appeal is allowed. The General Division decision is rescinded. The appeal is returned to the General Division to be heard on the merits, with the direction outlined above.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	R. B., Self-represented S. Doucette, for the Respondent
------------------	--