



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 78

Appeal Number: AD-15-1188

BETWEEN:

**J. C.**

Appellant

and

**Minister of Employment and Social Development  
(Formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION RENDERED BY: Shu-Tai Cheng

DECISION DATE: February 16, 2016

Canada 

## REASONS AND DECISION

### INTRODUCTION

[1] On December 24, 2015, the Appeal Division of the Social Security Tribunal of Canada (Tribunal) granted the Appellant leave to appeal.

[2] The Tribunal requested written submissions from the parties.

[3] The respondent submitted an agreement between the parties, signed on February 3 and 9, 2016, that consents to the matter being referred back to the Tribunals' General Division (GD).

[4] The agreement states the following:

The parties jointly consent to the SST Appeal Division ordering, in accordance with subsection 59(1) of the *Department of Employment and Social Development Act*, that:

This case be referred back to the Social Security Tribunal's General Division with directions that a *de novo* hearing be held to determine the merits of the disability pension application presented by the Appellant.

### ISSUES

[5] The Tribunal must decide whether it should dismiss the appeal; render the decision that the GD should have rendered; refer the matter back to the GD; or confirm, rescind or revise the decision.

### ANALYSIS

[6] Neither the Applicant nor the Respondent attended the GD in-person hearing. The Applicant requested an adjournment so that he could attend the in-person hearing. The GD denied the adjournment almost six months after the initial adjournment request.

[7] In its decision of December 24, 2015, the Tribunal's Appeal Division noted that:

[20] The reasons provided by the GD for denying the adjournment are not consistent with the reasons submitted by the Applicant in his request for adjournment. The time lapse between the request for adjournment and the refusal of the request is also curious.

[21] This denial resulted in the Applicant not having the opportunity to be heard at a hearing.

[22] After reviewing the appeal docket, the GD's decision, and the arguments in support of the Application, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant has raised a question of natural justice the answer to which may lead to the setting aside of the decision challenged.

[8] After reviewing consent of both parties, the file, and the GD decision, I allow the appeal. Because of the principle that there is a right to be heard (*audi alteram partem*), and the fact that evidence will have to be presented, it is appropriate to refer the matter back to the Tribunal's General Division.

## **CONCLUSION**

[9] The appeal is allowed and the matter is referred back to the Tribunal's General Division for a *de novo* hearing.

Shu-Tai Cheng  
Member, Appeal Division