

Citation: *A. Q. v. Canada Employment Insurance Commission*, 2015 SSTAD 1138

Appeal No. AD-13-1132

BETWEEN:

**A. Q.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER : Mark BORER

DATE OF DECISION: September 28, 2015

DECISION: Appeal dismissed

## **DECISION**

[1] The appeal is dismissed as abandoned.

## **INTRODUCTION**

[2] On March 26, 2013, a panel of the board of referees (the Board) dismissed the Appellant's appeal. The Appellant appealed that decision to the Appeal Division and in due course leave to appeal was granted.

[3] On August 25, 2015, a teleconference hearing was held. The Commission appeared and made submissions, but the Appellant did not.

## **ANALYSIS**

[4] The Appellant did not appear at the scheduled teleconference hearing. I note that the record shows that the notice of hearing, sent by Xpresspost, was personally signed for by the Appellant. I further note that since leave to appeal was granted the Tribunal has not received any communications from the Appellant.

[5] At the teleconference hearing, having observed the above, I expressed my intention to dismiss this appeal as abandoned and asked the Commission for any submissions they might have.

[6] The Commission agreed that it had been common for umpires (members of the predecessor tribunal which heard employment insurance appeals) to dismiss appeals as abandoned when the Appellant did not appear, but asked for time to make further submissions. I granted this request, and in writing extended the same opportunity to the Appellant.

[7] The Appellant did not respond by the stated deadline.

[8] The Commission submitted that although they did not oppose dismissing this appeal as abandoned, they confined their submissions to the particular facts of this case only.

[9] While I believe that I am permitted to dismiss appeals as abandoned based upon the general authority of administrative tribunal members to regulate the proceedings before them, I also note that dismissing an appeal as abandoned was specifically approved by the Federal Court of Appeal in *Abdul v. Canada (Attorney General)*, 2001 FCA 271.

[10] In that case an umpire, having found that notice of the hearing had been properly given to the appellant and neither the appellant nor anyone on his behalf appeared at the scheduled hearing, dismissed the appeal (in CUB 46812) as abandoned.

[11] Upon realizing that his case had been dismissed, the appellant in that matter asked that the umpire rescind or amend his decision under the authority of s. 120 of the *Employment Insurance Act* (now, with identical wording, s. 66 of the *Department of Employment and Social Development Act*). In support of this application, the appellant filed a doctor's note which indicated that he had been sick on the day in question.

[12] Reviewing the medical note, the umpire determined (in CUB 46812A) that it did not constitute "new facts", as contemplated by the *Act*, because it did not explain why the appellant was unable to attend the hearing or, in the alternative, was unable to produce the medical note at or before the hearing. He therefore dismissed the application.

[13] In due course, the appellant appealed further to the Federal Court of Appeal. In their decision, the Court noted that the umpire had dismissed the appellant's appeal as abandoned. The court also noted that the appellant's application under s. 120 had been dismissed for failing to show any "new facts".

[14] After reviewing the medical note provided by the appellant, the Court found that the umpire had been correct in determining that the note did not explain why the appellant was not present, and as such was not new evidence. The court then stated that:

[W]e cannot say that [the umpire] was wrong in the exercise of his discretion, nor that he offended any principles of natural justice or procedural fairness. His decision, based on the record and the submissions of the parties, is not in error.

[15] The case before me is identical to the one before the umpire in *Abdul*. Although properly notified, neither the Appellant nor anyone on his behalf appeared at the hearing held before me. I therefore find that the Appellant has abandoned his appeal.

## **CONCLUSION**

[16] For the above reasons, the appeal is dismissed as abandoned.

*Mark Borer*

Member, Appeal Division