

**Citation: *C. N. v. Canada Employment Insurance Commission*, 2015 SSTAD 1363**

**Date: November 27, 2015**

**File number: AD-13-698**

**APPEAL DIVISION**

**Between:**

**C. N.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Shu-Tai Cheng, Member, Appeal Division**

**Decision on the record made on November 27, 2015**

## REASONS AND DECISION

### INTRODUCTION

[1] On August 29, 2012, the Board of Referees (Board) determined that the claimant (Applicant) did not show good cause for the delay in filing her claim for benefits and that she did not have sufficient hours to establish a claim for benefits.

[2] An application for leave to appeal the Board decision was filed with the Appeal Division (AD) of the Tribunal in August 2013, and leave to appeal was granted on June 15, 2015.

[3] Since leave to appeal was granted, the Tribunal has been unable to locate the Appellant and provide a notice of hearing.

[4] This appeal was decided on the basis of the record for the following reasons:

- a) Attempts were made to send a notice of hearing to the Appellant by courier and regular mail;
- b) Attempts were made to contact the Appellant by telephone at the last number she provided, and e-mail messages were sent to the Appellant at the last e-mail address she provided;
- c) A telephone conference hearing proceeded on September 29, 2015, and the Appellant did not attend. As the Tribunal was not satisfied that the Appellant had received notice of the hearing, the hearing was adjourned;
- d) A new hearing date was set for November 26, 2015, but the notice of hearing could not be delivered by courier or by regular mail and no other form of communication to the Appellant had succeeded. Therefore, the November 26, 2015 hearing was cancelled; and
- e) The requirements under *Social Security Tribunal of Canada Regulations* (Regulations) to proceed as informally and quickly as the circumstances, fairness and natural justice permit.

## **THE LAW**

[5] Paragraph 3(1)(a) of the Regulations states “[t]he Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.”

[6] Subsection 3(2) of the Regulations provides that “[i]f a question of procedure that is not dealt with by these Regulations arises in a proceeding, the Tribunal must proceed by way of analogy to these Regulations.”

[7] Section 6 of the Regulations says that “[a] party must file with the Tribunal a notice of any change in their contact information without delay.”

[8] Section 12 of the Regulations specifies that “[i]f a party fails to appear at a hearing, the Tribunal may proceed in the party’s absence if the Tribunal is satisfied that the party received notice of the hearing” and further provides that “[t]he Tribunal must proceed in a party’s absence if the Tribunal previously granted an adjournment or postponement at the request of the party and the Tribunal is satisfied that the party received notice of the hearing.”

[9] Section 43 of the Regulations states “[a]fter every party has filed a notice that they have no submissions to file - or at the end of the period set out in section 42, whichever comes first - the Appeal Division must without delay

(a) make a decision on the appeal; or

(b) if it determines that further hearing is required, send a notice of hearing to the parties.”

## **ISSUE**

[10] Whether the Appellant has abandoned the appeal?

## **ANALYSIS**

[11] In the Application for Leave to Appeal form that was used by the Appellant, as well as other correspondence sent by the Tribunal, the parties to the appeal were notified of their

obligation under section 6 of the Regulations to advise the Tribunal of any changes to their contact information and that the failure to do so may have a detrimental impact on the appeal.

[12] On August 25, 2015, the notice of hearing for a teleconference hearing on September 29, 2015 was sent to the Appellant by Priority Post to the following address: X – X X st., X, NB XXX XXX.

[13] On September 26, 2015, the AD Member called into the teleconference hearing line to conduct the hearing, but neither the Appellant nor the Respondent was in attendance. As the AD Member was not satisfied that the Appellant had received notice of the hearing, the hearing was adjourned and rescheduled.

[14] On September 30, 2015, the notice of hearing (sent in August 2015) was returned to the Tribunal and was marked “returned to sender”.

[15] The Tribunal tried to contact the Appellant by telephone on October 2, 6 and 7, 2015 and by e-mail on October 7, 2015. There was no answer at the telephone number on file for the Appellant. There was also no acknowledgement of receipt to the email.

[16] On October 14, 2015, a second notice of hearing for a teleconference hearing on November 26, 2015 was sent to the Appellant by Priority Post to the following address: X – X X St., X, NB XXX XXX. The same document was sent to the Appellant by regular mail. On November 19, 2015, this notice of hearing was also returned to the Tribunal and marked undelivered.

[17] The second notice of hearing was also sent to the Appellant by e-mail on October 15, 2015.

[18] The Tribunal tried again to contact the Appellant by telephone on November 19, 2015. The Tribunal was unable to reach the Appellant by any of the means attempted.

[19] On November 24, 2015, the teleconference hearing scheduled for November 26, 2015 was cancelled.

[20] The Appellant was notified, in the Application for Leave to Appeal and in subsequent correspondence, of the obligation to notify the Tribunal of any changes to her contact information. The Appellant has failed to do so.

[21] Following internal procedures adopted by the Tribunal, multiple attempts have been made to deliver the notice of hearing to the Appellant and to contact the Appellant by telephone and e-mail. However, the Tribunal has been unsuccessful in delivering the notice of hearing or locating the Appellant.

[22] The Tribunal is required to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[23] Given that the Appellant has failed to comply with the requirements of section 6 of the Regulations, the Tribunal finds that she has abandoned the appeal. The Tribunal proceeds in this manner under the authority of subsection 3(2) of the Regulations which allows the Tribunal to proceed by way of analogy in questions of procedure that are not dealt with in the Regulations.

[24] I do not make this decision lightly. However, I must make a decision which complies with the regulatory requirement to secure the just and most expeditious determination of appeals and applications as the considerations of fairness and natural justice permit.

## **CONCLUSION**

[25] The Tribunal finds that the Appellant has abandoned the appeal.

[26] The appeal is dismissed as abandoned, and the file will be closed.

Shu-Tai Cheng  
Member, Appeal Division