

Citation: *M. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 1467

Appeal No. AD-14-369

BETWEEN:

M. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: December 22, 2015

DECISION: Appeal dismissed

DECISION

[1] The appeal is dismissed as abandoned.

INTRODUCTION

[2] On June 11, 2014, a member of the General Division determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. In due course the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] On December 15, 2015, a teleconference hearing was held.

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 also note that since the appeal was filed the Tribunal has not received any communications from the Appellant.

[5] Further, on July 13, 2015, the Appellant's representative wrote a letter to the Tribunal removing themselves from the file. The next day, the representative clarified by telephone that they had no mandate to continue to represent the Appellant and that they were unable to contact or locate her.

[6] At the hearing, I expressed my intention to dismiss the appeal as abandoned and asked the Commission if they had any submissions on this point. They replied that in the circumstances of this case and given the fact that the Appellant had been properly notified of the hearing, they had no objections to me doing so.

[7] Because of the foregoing, I find that this appeal should be dismissed as abandoned.

[8] 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.

[9] In that case, an umpire (a member of the predecessor tribunal to the Appeal Division for employment insurance appeals), 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.

[10] 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.

[11] 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.

[12] 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".

[13] 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.

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

CONCLUSION

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

Mark Borer

Member, Appeal Division