



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 190

Tribunal File Number: AD-16-1270

BETWEEN:

G. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: May 8, 2017

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] Previously, a member of the General Division dismissed the Appellant's appeal as abandoned. In due course the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] This appeal was decided on the record.

ANALYSIS

[4] This case revolves around the decision of a General Division member to dismiss the Appellant's appeal as abandoned because she failed to attend a properly scheduled hearing held on October 4, 2016.

[5] The Appellant argues that she only received the notice of hearing after the teleconference had taken place. She asks for a new hearing.

[6] The Commission notes that according to the Canada Post signature page the Appellant signed for the notice of hearing on September 26, 2016. They ask that I dismiss her appeal.

[7] In my decision granting leave to appeal, I noted that the General Division member had gone to extreme lengths to accommodate the Appellant and that he had scheduled and rescheduled multiple hearings at her request. I further noted that the member had explained in great detail why he deemed the Appellant to have abandoned her appeal.

[8] To ensure that the Appellant was in full possession of the facts, I also ordered that the Canada Post signature page be sent to the parties and stated that I expected the Appellant to fully address the above points in her submissions.

[9] The Appellant responded with a number of submissions and documents that did not address the issue at hand: whether or not the General Division member was wrong to proceed in her absence and dismiss her appeal as abandoned.

[10] On a number of previous occasions (such as in *A. C. v. Canada Employment Insurance Commission*, 2016 SSTA DEI 418), I have held that Tribunal members are permitted to dismiss appeals as abandoned based upon the general authority of administrative tribunal members to regulate the proceedings before them. In that case, I also noted that dismissing an employment insurance appeal as abandoned was specifically approved by the Federal Court of Appeal in *Abdul v. Canada (Attorney General)*, 2001 FCA 271.

[11] In *Abdul*, 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 that neither the Appellant nor anyone on his behalf appeared at the scheduled hearing, dismissed the appeal (in CUB 46812) as abandoned.

[12] 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* (or EI 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.

[13] Reviewing the medical note, the umpire determined (in CUB 46812A) that it did not constitute "new facts," as contemplated by the EI 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.

[14] 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."

[15] 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.

[16] In the case at hand, the General Division member (at paragraph 17 of his decision) set out the many actions that he had taken to accommodate the Appellant and the difficulties he encountered in doing so. There is no value in recounting the numerous attempts in detail except to say that, to accommodate the Appellant, the General Division member scheduled (and was forced to cancel) five separate hearings, none of which the Appellant attended, and that the member found that the Appellant had received notice of at least some of them.

[17] It was only at this point that the member dismissed the Appellant's appeal as abandoned.

[18] Tribunal members are required to respect the natural justice rights of appellants and to ensure that procedural fairness has been respected in all cases and at all times. This sometimes requires taking additional measures to ensure that all has proceeded fairly. That being said, the appeal process cannot continue forever. The Tribunal has finite resources and many files which require those scarce resources. There is a limit to the steps that can be taken to accommodate an appellant and, in this case, that limit was met and exceeded.

[19] I find that the General Division member made no procedural error, nor did he offend any principles of natural justice or procedural fairness. As I can find no error in his decision, this appeal must fail.

CONCLUSION

[20] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division