



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 262

Tribunal File Number: AD-16-799

BETWEEN:

J. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: June 8, 2017

DATE OF DECISION: July 11, 2017

DECISION

[1] The appeal is dismissed as abandoned.

INTRODUCTION

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

[3] On June 8, 2017, a teleconference hearing was held. The Commission attended and made submissions, but the Appellant did not. An interpreter was also present.

ANALYSIS

[4] The Appellant did not appear at the scheduled teleconference hearing. I note that the record shows that the Appellant had received the notice of hearing, which had been sent by courier. I also note that since leave to appeal was granted the Tribunal has not received any further submissions from the Appellant, although he did call once to update his mailing address.

[5] 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.

[6] The day after the hearing, the Appellant contacted the Tribunal and asked when his hearing was. Tribunal staff told him that he had already missed his hearing and advised him to submit his explanation for doing so, with a request for a new hearing, in writing.

[7] Although I have now waited almost a month for the Appellant to do so, no such request has been made.

[8] On a number of previous occasions (such as in *A. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 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.

[9] 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.

[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 law, because it did not explain why the appellant was unable to attend the hearing or, in the alternative, why he had been 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 that the appellant had provided, the Court found that the umpire had been correct in determining that the note did not explain why the appellant had been absent and that, as such, it 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*.

[15] Although properly notified, neither the Appellant nor anyone on his behalf appeared at the hearing held before me, nor has any explanation for this absence been offered.

[16] I therefore find that the Appellant has abandoned his appeal.

CONCLUSION

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

Mark Borer

Member, Appeal Division