



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. G. v Canada Employment Insurance Commission*, 2019 SST 324

Tribunal File Number: AD-18-755

BETWEEN:

T. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 2, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] T. G. (Claimant) applied for Employment Insurance benefits after he was placed on an unpaid leave of absence by his employer. The Canada Employment Insurance Commission denied his claim, deciding that he left his employment due to misconduct. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division scheduled hearing dates for the appeal twice. The Claimant did not attend either hearing date. The General Division decided that the Claimant had abandoned his appeal.

[3] The Claimant later requested leave to appeal the General Division decision. The Tribunal's Appeal Division granted leave to appeal on the basis that the Claimant may have been incapacitated from the time that the hearings were scheduled until he filed the application for leave to appeal. The appeal is dismissed because the Claimant has not produced any evidence to show that the General Division failed to observe a principle of natural justice by failing to accommodate his incapacity.

PRELIMINARY MATTER

[4] This appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- The Claimant did not file any information to support his case, despite the General Division's invitation to do so;
- The legal issue to be decided is straightforward;
- The Tribunal has authority to decide what form the hearing of the appeal will take;

- The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly and efficiently as the circumstances and considerations of fairness and natural justice permit.¹

ISSUES

[5] Did the Claimant present any evidence of his mental or physical incapacity to support his argument that there was a failure to observe a principle of natural justice?

[6] Did the General Division make an error under the *Department of Employment and Social Development Act* such that the Appeal Division should intervene?

ANALYSIS

Issue 1: Evidence of incapacity

[7] The Tribunal's General Division set a first hearing date of February 19, 2018. The Claimant did not attend the hearing, but requested an adjournment after that date. The General Division granted the adjournment and set another hearing date. The Claimant also failed to attend this hearing and did not contact the Tribunal about this. The General Division then decided that the Claimant had abandoned his appeal.

[8] On November 13, 2018, the Claimant filed an application to the Tribunal's Appeal Division seeking leave to appeal the General Division's decision. Leave to appeal was granted because the Appeal Division found that the Claimant may have been incapacitated for a time because one of his parents died and his wife had a miscarriage, and it would be contrary to the principles of natural justice to deprive him of the opportunity to present his case if he was incapacitated. The Claimant did not provide any objective evidence of these circumstances. In the decision that granted leave to appeal, the Tribunal directed the Claimant to provide such evidence.

[9] The leave to appeal decision is dated December 19, 2018. It was sent to the Claimant by regular mail. It was not returned. The Claimant has not provided any further information to the

¹ *Social Security Tribunal Regulations* s. 3(1)

Tribunal in spite of a clear invitation to provide this. Therefore, there is no basis to conclude that the General Division failed to observe a principle of natural justice by failing to accommodate an incapacity. The appeal must be dismissed for this reason.

Issue 2: Grounds of appeal under the *Department of Employment and Social Development Act*

[10] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.²

[11] The Claimant did not suggest that the General Division based its decision on an erroneous finding of fact. I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information when it decided that the Claimant had abandoned the appeal.

[12] The General Division decision sets out legal authority for its decision to find that the Claimant abandoned the appeal.³ It applied the law to the facts before it. Therefore, the General Division made no error in law.

CONCLUSION

[13] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
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² DESD Act s. 58(1)

³ General Division decision at para. 10

SUBMISSIONS:	T. G., Appellant Susan Prud'Homme, Representative for the Respondent
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