



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. T. v Canada Employment Insurance Commission*, 2019 SST 437

Tribunal File Number: AD-19-234

BETWEEN:

J. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shirley Netten

Date of Decision: May 6, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is granted, and the appeal is allowed. This matter will be returned to the General Division.

BACKGROUND

[2] J. T. (Claimant) appealed a reconsideration decision of the Canada Employment Insurance Commission (Commission) to the General Division of the Social Security Tribunal (Tribunal) in November 2018. An initial Notice of Hearing was sent to the Claimant by Expresspost on January 18, 2019. The Claimant requested and received an adjournment of that hearing due to illness. The second Notice of Hearing was sent to the Claimant by email on February 8, 2019. The General Division deemed the appeal abandoned after the Claimant did not join the teleconference hearing on March 5, 2019. The decision notes that a Registry Officer had confirmed the Claimant's email address on February 8, 2019 and the Claimant had not contacted the Tribunal.

AGREEMENT

[3] A settlement conference was held in this matter, under section 17 of the *Social Security Tribunal Regulations*. The parties have agreed that the Claimant's application for leave to appeal should be granted and that his appeal should be allowed on the ground that the General Division failed to observe a principle of natural justice. The parties have further agreed that the appropriate remedy is to return this matter to the General Division for reconsideration.

[4] This outcome is consistent with the relevant provisions of the *Department of Employment and Social Development Act* (DESDA) and with the evidence on file, as set out below.

[5] The Appeal Division must grant leave (permission) to appeal unless the appeal "has no reasonable chance of success."¹ One of the grounds of appeal to the Appeal Division is that the

¹ DESDA, ss 58(2) and 58(3)

General Division failed to observe a principle of natural justice.² It has long been held that the right to be heard is a fundamental natural justice right, and that a breach of this right constitutes grounds for a new hearing.

[6] In his Notice of Appeal to the General Division, the Claimant ticked “No” following the statement “I authorize the Tribunal to correspond with me by email.” As pointed out by the Commission’s representative, even if the Claimant had authorized email communication, the version of the form in effect at that time informed the Claimant that the Notice of Hearing would not be sent by email. Consistent with this and with the Claimant’s direction, the first Notice of Hearing was sent to him by Expresspost. Without explanation, the second Notice of Hearing was sent by email.

[7] In his Application to the Appeal Division of April 2, 2019, the Claimant wrote:

I was told my new hearing date would arrive by mail, as I indicated I do not ever check my email. I was told that mail would be OK and then missed the email and found out when I called that I had missed the hearing.

[8] This position is supported by a telephone log which states that the Claimant confirmed his mailing address on February 8, 2019, with no mention of an email address or email communication. The Claimant’s position is further supported by the telephone log of March 15, 2019, when the Claimant called in for a status update, unaware that the matter had proceeded in his absence.

[9] In this context, I agree with the parties that the Claimant did not have adequate notice of his hearing at the General Division. This constituted a breach of his right to be heard, which is a fundamental principle of natural justice. The Claimant has a reasonable chance of success in his appeal to the Appeal Division, and leave to appeal is granted. The Claimant also succeeds in his appeal to the Appeal Division, and his appeal is allowed.

² DESDA, s 58(1)(a)

[10] The record in this matter is not complete, and consequently I cannot provide a decision on the substance of the Claimant's appeal. Rather, this matter must be returned to the General Division to be heard anew, as the parties have agreed.

CONCLUSION

[11] The application for leave to appeal is granted, and the appeal is allowed. This matter is returned to the General Division for reconsideration. In the circumstances of this appeal, the General Division is directed to send the Notice of Hearing to the Claimant by Expresspost (or its equivalent).

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	J. T., self-represented I. Thiffault, for the Respondent
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