



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 546

Tribunal File Number: AD-19-220

BETWEEN:

D. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision and Decision by: Shirley Netten

Date of Decision: June 4, 2019

DECISION AND REASONS

DECISION

[1] The Application for leave to appeal is granted, and the appeal is allowed. The matter is returned to the General Division for reconsideration.

BACKGROUND

[2] D. H. (Claimant) appealed a reconsideration decision of the Canada Employment Insurance Commission (Commission) to the General Division of the Social Security Tribunal (Tribunal) on January 24, 2019. The Tribunal sent him a package, including a Notice of Hearing, by Expresspost on February 5, 2019. The Claimant or a family member signed for the package.

[3] The Claimant did not attend his hearing as scheduled on February 26, 2019, and he did not contact the Tribunal before or after the hearing. On March 4, 2019, the General Division dismissed the Claimant's appeal on the basis that he had abandoned his appeal. The General Division did not address the merits of the appeal.

AGREEMENT

[4] 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.

[5] I accept this agreement on the basis that the outcome is consistent with the evidence and the relevant provisions of the *Department of Employment and Social Development Act* (DESDA) and the *Social Security Tribunal Regulations* (Regulations).

DISCUSSION

[6] The Appeal Division must grant leave (permission) to appeal unless the appeal "has no reasonable chance of success."¹ The grounds of appeal to the Appeal Division include a failure

¹ DESDA, ss 58(2) and 58(3)

to observe a principle of natural justice.² I agree both that the Claimant had a reasonable chance of success in his appeal and that the General Division breached a principle of natural justice, for the following reasons.

[7] The Supreme Court of Canada has said the following, with respect to powers of administrative tribunals:³

As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.

[8] There are specific rules for the Tribunal, set out in the Regulations, which discuss a party's failure to appear at a hearing:

12(1) If a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

(2) The Tribunal must proceed in a party's absence if the Tribunal previously granted an adjournment or postponement at the request of the party and the Tribunal is satisfied that the party received notice of the hearing.

[9] The Regulations contemplate proceeding in the party's absence where the Tribunal is satisfied notice has been given, and require proceeding in this manner following a previous adjournment. This strongly suggests that the Tribunal does not have the authority to consider an appeal abandoned (rather than proceeding on the merits) solely on the basis of a failure to appear. The General Division referenced a previous decision of the Appeal Division which held that members have this authority.⁴ However, that decision did not address the above-cited Regulations, and relied on a Federal Court of Appeal decision⁵ that addressed the powers of an Umpire. The Tribunal operates under a different legislative and regulatory scheme.

² DESDA, s 58(1)(a)

³ *Prasad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560

⁴ *A.C. v Canada Employment Insurance Commission*, 2016 SST 70631

⁵ *Abdul v. Canada (Attorney General)*, 2001 FCA 271

[10] Regardless of whether the Tribunal has the general authority to establish a procedure for deeming appeals abandoned, I agree with the parties that the manner in which this occurred in the present appeal was procedurally unfair. The Claimant received a Notice of Hearing which states:

FAILURE TO ATTEND THE HEARING

If a party does not attend the hearing, the Tribunal member may proceed in the absence of the party if the member is satisfied that the party has received the notice of hearing.

[11] The Claimant explained in his Application to the Appeal Division that he had been out of the country and then dealing with a fire in February 2019, and he did not open the Tribunal package until February 26, 2019. This was an hour after his General Division hearing was set to begin. Having reviewed the above-cited paragraph in his Notice of Hearing, he decided he was satisfied to rely on his written representations: “I therefore didn’t have any more to add and as stated in the correspondence thought that it was O.K. if the appeal went ahead without me.”

[12] Certainly, the General Division had the authority to proceed with a decision after the Claimant failed to attend his hearing. There was evidence before it that the Claimant had received the Notice of Hearing. The Claimant had not requested an administrative change of date or an adjournment of the hearing. He had not called in, either before or soon after the hearing, to explain a misunderstanding, mishap, or technical difficulty.

[13] However, nothing in the law or the correspondence from the Tribunal alerted the Claimant to the possibility that his appeal at the General Division could be deemed abandoned if he failed to attend his hearing. To the contrary, the Claimant was led to believe (consistent with the Regulations) that his appeal would proceed on the merits in his absence. In this context, it was procedurally unfair to deem the appeal abandoned. The General Division breached the Claimant’s right to be heard, and thereby failed to observe a principle of natural justice.

[14] The remedies available to the Appeal Division include returning the matter to the General Division for reconsideration.⁶ I accept the parties’ agreement that this is the appropriate remedy

⁶ DESDA, s 59(1)

in this case, in light of the settlement proceedings. The General Division is directed to determine the Claimant's intentions before proceeding with this appeal.

CONCLUSION

[15] The Application for leave to appeal is granted, and the appeal is allowed. The matter is returned to the General Division for reconsideration.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	D. H., Self-represented S. Doire and S. Prud'homme, for the Respondent
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