



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. K. v. Minister of Employment and Social Development*, 2017 SSTADIS 242

Tribunal File Number: AD-16-644

BETWEEN:

H. K.

Appellant

and

Minister of Employment and Social Development

Respondent

and

G. S.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: May 25, 2017

REASONS AND DECISION

[1] The Appellant is a party directly affected by proceedings brought by the Added Party in a separate appeal.

[2] The General Division determined that the Added Party's appeal of the Respondent's reconsideration decision of July 7, 2014, had not been brought on time.

[3] The Added Party had filed a notice of appeal on May 8, 2015, but the General Division determined that it was incomplete, as he had failed to provide a telephone number, a facsimile number and/or an email address in the designated areas on the form. The Social Security Tribunal of Canada (Tribunal) sought to inform the Added Party that his appeal was incomplete, but the Added Party denied that he had ever received any communications from the Tribunal in that regard. By the time he learned that his appeal was considered incomplete, more than one year had elapsed from the time that the reconsideration decision had been communicated to him. The Added Party provided the missing information on October 13, 2015.

[4] The General Division determined that the Added Party had completed his notice of appeal on October 13, 2015 and that it had therefore been filed late.

[5] The Added Party appealed, alleging that the General Division failed to observe a principle of natural justice. I granted leave to appeal, noting that, apart from having neglected to provide a telephone number on the form, the Added Party had otherwise fully complied with the requirements in bringing an appeal. I granted leave to appeal on the basis that there was an arguable case that the General Division should have considered the appropriateness of applying paragraph 3(1)(b) of the *Social Security Tribunal Regulations* (Regulations) and should have thereby determined whether there were any "special circumstances" that would warrant varying the Regulations or dispensing with the need for the Added Party to comply with a provision of the Regulations. I also queried whether it would defeat the purpose of social-benefits- conferring legislation to so readily dismiss an appeal on the basis of a defect in form or a technical irregularity.

[6] The Respondent submitted that the Added Party's contact information appeared in other documents that had been filed with his notice of appeal (at GD1-41, 58 and 74). The Respondent was of the position that the Added Party's notice of appeal therefore met the requirements set out in paragraph 24(1)(g) of the Regulations that an appeal must contain an appellant's full name, address, telephone number and, if applicable, facsimile number and email address.

[7] The Respondent was also of the position that the Added Party met at least three of the four criteria established in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The Respondent did not allege that it would suffer any prejudice, and it accepted that the Added Party had a continuing intention to pursue his appeal and a reasonable explanation for the delay in filing his notice of appeal outside of the 90-day filing period under section 52 of the *Department of Employment and Social Development Act* (DESDA). The Respondent did not address the issue of whether the matter disclosed an arguable case, but it was of the view that referring the matter back to the General Division, pursuant to subsection 59(1) of the DESDA, would provide the Added Party with a fair opportunity to present his case.

[8] Given the parties' position in this matter, I need not address the issues that I raised in my leave to appeal decision. It is in the interests of justice that the appeal be allowed and that the matter be returned to the General Division (Income Security) before a different member, for a hearing on the merits of the matter.

Janet Lew
Member, Appeal Division