

Citation: *D. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 198

Appeal No. AD-13-642

BETWEEN:

**D. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: December 24, 2014

DECISION: Leave to appeal granted

## DECISION

[1] On May 2, 2013, a panel of the board of referees (“the Board”) determined that the appeal of the Applicant from the previous determination of the Commission should be dismissed.

[2] The Applicant’s application was filed with the Tribunal outside of the 30-day time limit. However, the Applicant attempted to file his application with an umpire within the 30-day limit, and only became aware that this was no longer the correct procedure after the appeal period had passed. In light of this, it is my view that it would be contrary to the interests of justice to disallow the application for lateness and I therefore allow further time within which this application can be made.

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* states that the only grounds of appeal are that:

- (a) The General Division [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division [or the Board] based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] The *Act* also states that leave to appeal is to be refused if the appeal has “no reasonable chance of success”.

[5] I have read and carefully considered the application of the Applicant. In it, the Applicant outlines his view that the Board erred in concluding he had been dismissed for misconduct, in part because his dismissal is still under appeal by his union.

[6] Although I make no finding on the matter, on the face of the record it does not appear that the issue of the Applicant's outstanding grievance was addressed by the Board.

[7] In my view, these pleadings set out grounds which have a reasonable chance of success. Accordingly, this application for leave to appeal is granted.

*Mark Borer*

Member, Appeal Division