

Citation: *N. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 83

Appeal No. AD-13-616

BETWEEN:

N. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 21, 2015

DECISION: Leave to appeal refused

DECISION

[1] On March 14, 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 current 30-day time limit. However, the Applicant attempted to file his application with an umpire within the old 60-day limit, and only became aware that this was no longer the correct procedure after the appeal period had passed. Moreover, the Board communicated to the Applicant that he indeed had 60 days to appeal, which created a reasonable expectation that the 60-day limit would be applied in his case. 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 failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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 request for leave to appeal. In his submissions, the Applicant accepts that the Board ruled according to the law. However, he alleges that the Board acted contrary to the principles of natural justice because their

decision caused “undue hardship to be placed” on him by requiring a repayment of the benefits he received.

[6] When the Applicant says “natural justice”, he appears to be referring to equity and/or fairness. Although this is a common misconception, neither the Tribunal nor the Board has the power to ignore the law, no matter the circumstances.

[7] Rather, the role of the Appeal Division is to determine if an error has been made by the Board and if so to provide a remedy for that error. It is not the role of the Appeal Division to re-hear the case *de novo*. In my view, because the Applicant’s submissions have not disclosed any specific error or ground of appeal other than dissatisfaction with the outcome, this application does not have a reasonable chance of success.

[8] As it has no reasonable chance of success, this application for leave to appeal must be refused.

Mark Borer

Member, Appeal Division