

Citation: *A. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 224

Appeal No: AD-14-222

BETWEEN:

**A. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: February 18, 2015

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is refused.

## **INTRODUCTION**

[2] The Applicant applied for Employment Insurance benefits. She did not receive them due to a prior violation being imposed by the Respondent. She sought to appeal this decision after the time permitted to do so had expired. The Applicant sought an extension of time to request a reconsideration of the Respondent's decision imposing the violation. She argued that she was not aware that a violation had been imposed in 2010 when that occurred as she did not receive letters from the Respondent that were mailed to her.

[3] The Respondent made no submissions.

## **ANALYSIS**

[4] To be granted leave to appeal in this matter, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that can be considered by the Appeal Division of this Tribunal to grant leave to appeal (this is set out in the Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal under Section 58 of this *Act* that has a reasonable chance of success on appeal.

[6] The Applicant argued that 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. She argued that the General Division erred when it concluded that she had received notice of the violation in 2010. With this argument, she essentially asks this tribunal to reevaluate and reweigh the evidence that was put before the General Division to

reach a different conclusion. This is the province of the trier of fact. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the tribunal that made the findings of fact (the General Division in this case) – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. The General Division decision summarized all of the evidence regarding this issue, including records from the Respondent and submissions from the Applicant. It weighed this evidence to reach the decision. Therefore, this is not a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant also repeated many of the facts and arguments that were presented to the General Division. The repetition of this information is not a ground of appeal that can be considered under section 58 of the *Act*. Therefore, these arguments have no reasonable chance of success on appeal.

## **CONCLUSION**

[8] The Application is refused for the reasons set out above.

*Valerie Hazlett Parker*  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.