

Citation: *Canada Employment Insurance Commission v. M. O.*, 2015 SSTAD 305

Appeal No. AD-14-190

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

M. O.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: March 5, 2015

DECISION: Leave to appeal granted

DECISION

[1] On March 12, 2014, a member of the General Division determined that the appeal of the Respondent from the previous determination of the Commission should be allowed. In due course, the Commission filed a request for leave to appeal to the Appeal Division.

[2] 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.

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

[4] In their submissions, the Commission outlines their views as to how the General Division made legal and factual errors in allowing the Respondent’s appeal. Specifically, they allege that since the General Division determined that the Respondent was “unqualified, incapable and perhaps even incompetent” the General Division should have also found misconduct within the meaning of the *Employment Insurance Act*.

[5] If shown to be true, these arguments could result in a successful appeal and I therefore find that these pleadings have a reasonable chance of success. Accordingly, this application for leave to appeal is granted.

Mark Borer

Member, Appeal Division