

Citation: *S. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 328

Appeal No. AD-13-414

BETWEEN:

S. T.

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: March 10, 2015

DECISION: Leave to appeal granted

DECISION

[1] On May 21, 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. The Applicant filed a request for leave to appeal on August 2, 2013.

[2] In her application, the Applicant says that her filings were late because she was trying to acquire the recording of the Board hearing from the government. I note that the delay was not long, and that the Applicant has indicated a continuing intention to pursue the appeal. I also note that the Applicant, as detailed below, has demonstrated that her pleadings have a reasonable chance of success. Given the foregoing, 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] Among other arguments, the Applicant submits that the Board erred by not ruling on the issue of availability, the sole issue that was before it.

[6] Although I make no finding on the matter, it does appear on the face of the record that the Board may have failed to properly determine their jurisdiction in deciding what issues it was required to rule upon.

[7] If proven, the Applicant's arguments could result in a successful appeal. I therefore find that these pleadings have a reasonable chance of success and that this application for leave to appeal should be granted.

Mark Borer

Member, Appeal Division