

Citation: *R. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 414

Appeal No. AD-14-125

BETWEEN:

R. S.

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 26, 2015

DECISION: Leave to appeal granted

DECISION

[1] On January 22, 2014, a member of the General Division determined that the appeal of the Applicant from the previous determination of the Commission should be dismissed. In due course, the Applicant filed an application 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] This case primarily involves an allegation of misconduct as defined by s. 30 of the *Employment Insurance Act*. Among other arguments, the Applicant submits that the General Division member erred by finding that the burden of proof in cases of misconduct rests with the Appellant when in fact it does not.

[5] Although I make no finding on the matter, I note that on the face of the record the General Division member does appear to have found that the burden of proof rested with the Appellant. If true, this would be contrary to the jurisprudence of the Federal Court of Appeal in cases such as *Canada (Attorney General) v. Larivee*, 2007 FCA 312 and could result in a successful appeal.

[6] I therefore find that these pleadings have a reasonable chance of success. Accordingly, this application for leave to appeal must be granted.

Mark Borer

Member, Appeal Division