

Citation: *D. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 700

Appeal No. AD-13-702

BETWEEN:

D. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER : Mark BORER

DATE OF DECISION: June 4, 2015

DECISION: Leave to appeal granted

DECISION

[1] On January 29, 2013, a panel of the board of referees (the Board) determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. On July 11, 2013, the Appellant filed an application for leave to appeal to the Appeal Division.

[2] The Appellant's application to the Appeal Division was filed late. Although his explanation for this is not particularly compelling, because the application has a reasonable chance of success I find that it would be contrary to the interests of justice to disallow the application for lateness. 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] The Appellant submits that he only owes six weeks of overpayments, not eight as found by the Board, because his suspension was ended after six weeks.

[6] Although I make no finding on the matter, I note that on the face of the record the Board may not have properly stated and applied the law applicable in cases of suspensions for

misconduct. Instead, the Board appears to have applied the law applicable in cases of dismissal for misconduct, even though they found that the Appellant had been suspended.

[7] I therefore find that this application has a reasonable chance of success. For that reason, this application for leave to appeal must be granted.

[8] To ensure that this potentially novel issue is handled as efficiently as possible I would ask that the parties turn their minds to the interaction of sections 29, 30, and 31 of the *Employment Insurance Act*.

Mark Borer

Member, Appeal Division