

Citation: *C. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 701

Appeal No. AD-14-149

BETWEEN:

C. C.

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 July 9, 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 February 28, 2014, 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 considerable merit 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] Along other arguments, the Appellant submits that the Board decision was confusing and that it is not clear how it should be implemented.

[6] Although I make no findings on the matter, I note that on the face of the record the Board does not appear to have made findings of fact or stated and applied the proper legal test with regard to the penalty and allocation of earnings, and may thereby have erred.

[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.

Mark Borer

Member, Appeal Division