Citation: *D. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 830

Appeal No. AD-15-207

BETWEEN:

D. B.

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: June 30, 2015

DECISION: Leave to appeal refused

DECISION

[1] On March 21, 2015, a member of the General Division dismissed an appeal from the previous determination of the Commission. In due course, the Applicant filed an application requesting leave to appeal this decision 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 her application, the Applicant objects primarily to the submissions made by the Commission representative to the General Division member. The Applicant refers to the Commission representative as "very bias towards me [sic]" and states that the representative personally "falsified information pertaining to net gross income 2011 [sic]".

[5] I note that the common law system which the Tribunal is a part of is an adversarial system of justice. By definition, this means that the Commission and its representatives stand in opposition to the Applicant during these proceedings. From time to time the Commission will advocate a position favourable to the Applicant in the interests of justice or because there is no other possible outcome, but this is the exception rather than the rule. It cannot then be a surprise that the Commission representative made submissions that were not to the Applicant's liking.

[6] At their root, the arguments of the Applicant are actually a request that I re-hear the matter, give no weight to the evidence presented by the Commission, and then come to a conclusion different from that already rendered by the General Division member.

[7] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the *Act* has been made by the General Division and if so to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to re-hear the case *de novo*.

[8] It is not sufficient for an Applicant to plead that the General Division member was mistaken in his or her conclusions and ask the Appeal Division for a different outcome. In order to have a reasonable chance of success, the Applicant must explain in some detail how in their view at least one reviewable error set out in the *Act* has been made. Having failed to do so, this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer
Member, Appeal Division