

Citation: *N. V. v. Canada Employment Insurance Commission*, 2015 SSTAD 1006

Appeal No. AD-15-193

BETWEEN:

N. V.

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: August 21, 2015

DECISION: Leave to appeal granted

DECISION

[1] On February 15, 2015, 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] In their application for leave to appeal, the Applicant outlines their views as to how the General Division member made legal and factual errors in dismissing their appeal. Specifically, they allege that the General Division incorrectly determined that they were employed while undertaking an unpaid “trial period” with a prospective employer.

[5] I note that this issue is a somewhat unusual one which has not been definitively settled by the courts. I therefore find that this application has a reasonable chance of success and that leave to appeal must be granted.

[6] In order to more efficiently resolve this issue, I would ask that the parties be prepared to argue the legal issues and case law cited by the General Division member.

Mark Borer

Member, Appeal Division