

Citation: *J. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 1067

Appeal No. AD-15-254

BETWEEN:

J. 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: September 10, 2015

DECISION: Leave to appeal granted

DECISION

[1] On March 25, 2015, a member of the General Division determined that the appeal of the Applicant from the previous determination of the Commission should be dismissed. A request to rescind or amend that decision (filed by the Commission) was refused by the same member. In due course, the Applicant filed an application for leave to appeal the original 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] It cannot be disputed that this file is unusual. It concerns whether or not the Applicant was referred to a course of instruction by the Commission or a designated authority. I note that according to ss. 25(2) of the *Employment Insurance Act* the Tribunal has no jurisdiction over a decision of the Commission regarding a referral to a course of instruction.

[5] To assist me with my deliberations, I asked the parties for further submissions. The Commission noted at that time that they had filed a separate request to rescind or amend the General Division decision in favour of the Applicant, which was subsequently refused by the General Division member. The Commission now repeats its submissions that the appeal of the Applicant should be allowed on the issue of availability.

[6] Because of the unusual situation outlined above, I find that this application has a reasonable chance of success and that leave to appeal must be granted. I look forward to reading the further submissions of the parties on this matter.

Mark Borer

Member, Appeal Division