

Citation: *Canada Employment Insurance Commission v. N. L.*, 2015 SSTAD 1104

Appeal No. AD-14-160

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

N. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER : Pierre Lafontaine

DATE OF DECISION: September 18, 2015

DECISION: Leave to appeal refused

DECISION

[1] On February 26, 2014, a member of the General Division allowed the Respondent's appeal from the previous determination of the Commission. In due course, the Commission 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 their application, the Commission states that the General Division member erred in fact and law in determining that the Respondent had just cause to leave her employment but does not explain how, in their view, this was done.

[5] To assist me in my deliberations, I requested that the parties provide submissions regarding whether or not leave should be granted.

[6] Counsel for the Respondent replied by setting out in detail how the General Division decision should not be interfered with. He asks that leave to appeal be refused.

[7] Counsel for the Commission, on the other hand, submitted only that the Commission continues to rely upon the grounds stated in their initial application and "does not intend to file further submissions".

[8] Although they are perfectly entitled to do so, it is not clear to me what purpose is served by counsel for the Commission declining my request for further submissions regarding their appeal.

[9] I do not, as a rule, ask for submissions from the parties at the leave to appeal stage. The fact that I did so should have indicated to counsel that I was having some difficulties in determining whether or not leave should be granted, and that further submissions might be advisable.

[10] In any case, because of the refusal of the Commission to make further submissions, I must decide this case solely on the basis of what is contained in the initial application.

[11] 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*.

[12] 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. It is also not sufficient to simply recite the legislation.

[13] 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