Appeal No. AD-15-1014

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:	December 1, 2015
DECISION:	Leave to appeal refused

DECISION

[1]   On July 28, 2015, a member of the General Division dismissed the Applicant's 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]   The Applicant's application to the Appeal Division was filed late. In her application, she stated that she misplaced the General Division decision and requested another copy be sent by the Tribunal. This was done, and she filed her appeal soon thereafter. The Applicant's delay was not a long one, and I accept her explanation for it. For that reason, in the interests of justice I am prepared to allow further time within which this application can be made. I note that for the reasons below the Commission will not suffer any prejudice as a result of this.

[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 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.

[4]   The *Act* also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[5]   In her application the Applicant references a failure to observe a principle of natural justice, but means this in the sense that the outcome of the decision was "unfair and unjust, if not discriminatory". She adds that "there should be some special policy consideration given when there is only one EI qualified person available to provide compassionate care" and asks that the usual two week waiting period should be waived in the special circumstances of her case.

[6]   To assist me in my deliberations, I asked for further submissions from the Applicant. Specifically, I asked that the Applicant explain in detail how the General Division member erred in her decision. I noted that if the Applicant did not do so, her appeal could be dismissed without further notice to her.

[7]   In response to my request, the Applicant elaborated and clarified her initial comments. I have incorporated these additional submissions in my summary above, and gave them due consideration.

[8]   I am sympathetic to the tragic circumstances faced by the Applicant, as was the General Division member. But the fact remains that neither the General Division nor the Appeal Division has the power to ignore the rules set by Parliament for the granting of benefits. All Tribunal members are bound by the *Employment Insurance Act* and the associated regulations.

[9]   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*.

[10]   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