

Citation: *Z. H. L. v. Canada Employment Insurance Commission*, 2015 SSTAD 1439

Appeal No. AD-15-1160

BETWEEN:

Z. H. L.

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 15, 2015

DECISION: Leave to appeal granted

DECISION

[1] On September 22, 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 his application for leave to appeal, the Applicant outlines his views as to why he should not have to repay any overpayment before his Employer pays him certain allegedly owed wages.

[5] This is not a ground of appeal according to the *Act*.

[6] That being said, it is apparent from the face of the record that the General Division member may have made an error of law by incorrectly determining that the allocation of earnings is a discretionary decision of the Commission. Also, considering his findings at paragraph 25 of his decision, it is not entirely clear what is meant by his comments in the following paragraph.

[7] Although I make no finding on these matters, if they are found to be true this appeal could succeed. I therefore find that this application has a reasonable chance of success and that this application for leave to appeal must be granted.

Mark Borer

Member, Appeal Division