



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. H. v. Canada Employment Insurance Commission*, 2016 SSTADEI 34

Appeal No. AD-15-1083

BETWEEN:

**J. H.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 25, 2016

DECISION: Leave to appeal refused

## **DECISION**

[1] On August 24, 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 amended decision to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (the 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 her application the Applicant stated that she had been given erroneous advice from the Commission. She also submitted that the Commission did not act in a timely manner in notifying her of the overpayment.

[5] Noting that the Applicant's appeal was not complete because the grounds of appeal were not sufficiently detailed, Tribunal staff contacted the Applicant by letter and asked for further details. Specifically, the Tribunal asked that she provide full and detailed grounds of appeal as required by the *Act*, and provided her with examples of what constitutes grounds of appeal. The Tribunal letter also noted that if she did not do so, her application could be refused without further notice to her.

[6] The Applicant responded with a letter clarifying her views, which repeated that the General Division never addressed her argument that she had been given bad advice by the Commission. She alleged that she had been told by the Commission that the benefits she received were hers to keep even though this has not turned out to be the case.

[7] The Applicant does not appear to be challenging the General Division finding that she had received earnings from employment that must be allocated.

[8] No matter what the Applicant was told by the Commission, the General Division (and the Appeal Division) is bound by the *Employment Insurance Act*. As it is settled law that the Commission is not bound by the advice given by its agents, even if the General Division accepted the Applicant's views in full on this point, it could not have changed the member's decision.

[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] 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*

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Member, Appeal Division