



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 80

Appeal No. AD-15-396

BETWEEN:

M. M.

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: February 10, 2016

DECISION: Leave to appeal refused

Canada

DECISION

[1] On May 25, 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] 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 his application the Applicant stated that the General Division member erred, and proceeded to re-state many of the facts he raised before the General Division. The Applicant also stated that no matter what the decision was he (for unrelated reasons) was not eligible for benefits, so he had no motive to make a false claim. Finally, the Applicant noted that the case law he had received from the Commission was biased against him, and that this suggested that the General Division member might be biased against him also.

[5] Given the position of the Applicant that for reasons not under appeal here he is not entitled to receive benefits, it is not entirely clear what ultimate remedy he is seeking. That being said, it is the responsibility of the Tribunal to rule on all issues before it and I have

considered his arguments on their own merits regardless of whether or not they will result in the Applicant receiving benefits.

[6] The Commission is a party to the case, and as such will almost always take a position contrary to that of the Applicant. If the Commission felt that the Applicant was entitled to benefits according to the law, they would no doubt already have conceded the appeal. I note that the General Division member explained this to the Applicant during the hearing, as evidenced by the hearing recording. There is no basis to conclude that the General Division member was biased against the Applicant in any way.

[7] 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*.

[8] Noting that the Applicant's appeal was not sufficiently detailed, Tribunal staff contacted the Applicant by letter and asked for further details. Specifically, the Tribunal asked that he provide full and detailed grounds of appeal as required by the Act, and provided him with examples of what constitutes grounds of appeal. The Tribunal letter also noted that if he did not do so, his application could be refused.

[9] The Applicant responded with a letter which repeated many of the arguments he made in his application, and added that the General Division decision did not mention that he (the Applicant) was not eligible for benefits and therefore had no reason to lie.

[10] None of the points raised by the Applicant constitute an enumerated ground of appeal. Although he referenced the Act, he did not articulate any material error committed by the General Division member. I also note that the General Division member at no time questioned the Applicant's credibility in his decision.

[11] 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