



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. S. v. Canada Employment Insurance Commission and Heritage Plaza Hotel*,
2016 SSTADEI 82

Appeal No. AD-16-100

BETWEEN:

P. S.

Applicant

and

Canada Employment Insurance Commission and Heritage Plaza Hotel

Respondents

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 November 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* 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 all the facts had not been taken into consideration. Specifically, he objected to the fact that some of the evidence provided by the Employer had been unsigned. He also objected to the fact that because Employer witnesses had not attended the hearing, he could not cross-examine them. He did not reference the grounds of appeal or explain in what manner the member erred.

[5] I observe at this point that the General Division member has no legal method to compel witnesses to appear at a hearing so that they can be cross-examined, and that an unsigned statement does not, on its own, make a written statement any less valid as evidence.

[6] Noting that the Applicant's appeal was not complete because the grounds of appeal were not sufficiently detailed, I requested that Tribunal staff contact the Applicant by letter

and ask 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 without further notice.

[7] The Applicant responded with a letter which referenced natural justice and stated that the General Division member made an error of fact. The Applicant then re-stated many of the factual assertions he had made before the General Division member. Essentially, the Applicant is asking that I re-weigh the evidence and come to a conclusion more favourable to him.

[8] 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*.

[9] In order to have a reasonable chance of success, the Applicant must explain in some detail how in his 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