



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 204

Tribunal File Number: AD-16-438

BETWEEN:

**S. T.**

Appellant

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: April 12, 2016

DECISION: Leave to appeal granted

## DECISION

[1] On February 11, 2016, a member of the General Division exercised his discretion and determined that an extension of time to file the Applicant's appeal should be refused. 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* (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 for leave to appeal the Applicant outlines his views as to how the General Division member erred by applying the wrong test and misunderstanding certain pieces of evidence in coming to the conclusion that an extension of time to file his appeal should be refused. The Applicant also alleges that the General Division member "consistently portrayed [the Applicant] as a free loader, as one who was looking for ways to scam and manipulate the system to try to get income without having to work" and thereby demonstrated that he was biased against the Applicant.

[5] Allegations of bias go to the heart of the administrative law system and, as stated by the Federal Court of Appeal in *Joshi v. Canadian Imperial Bank of Commerce*, 2015 FCA 92, at paragraph 10:

“[B]ias is a term with a precise legal definition. Allegations of bias are of a very serious nature and should not be made without proof... Such allegations are particularly egregious when made against judges, as they attack one of the pillars of the judicial system, namely the principle that judges are impartial as between the parties who appear before them...”

[6] The above applies equally to Tribunal members.

[7] In this case, the allegation of bias has been made by on behalf of the Applicant by a member of the Law Society of Upper Canada, and who is by virtue of that membership an officer of the court and bound by the *Rules of Professional Conduct*. I therefore find that the allegation has not been made frivolously, and that for purposes of this leave to appeal it has a reasonable chance of success. I do, however, expect and require the Applicant to provide written evidence to substantiate this allegation within the usual 45 day period for submissions which follows the granting of leave to appeal.

[8] Having found that above, I find that this application has a reasonable chance of success and for that reason this application for leave to appeal must be granted.

*Mark Borer*

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Member, Appeal Division