



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 229

Tribunal File Number: AD-15-1090

BETWEEN:

Z. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division –Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER::: Mark BORER

DATE OF DECISION: April 22, 2016

DECISION Leave to appeal granted

DECISION

[1] On August 28, 2015, a member of the General Division dismissed the Applicant's appeal from the previous determination of the Commission. In due course, the Appellant filed an application requesting leave to appeal this decision to the Appeal Division.

[2] The Appellant's initial application to the Appeal Division was filed on time but was incomplete, and by the time it was completed the 60-day appeal period had expired. However, as it was perfected in a reasonably timely manner I find that an extension of time is not required. If I am mistaken and an extension of time is required, in the interests of justice I would grant that extension for the reasons pleaded by the Applicant.

[3] 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.

[4] The Act also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[5] Initially, the Applicant simply claimed that the General Division "failed to appropriately evaluate" a number of pieces of evidence.

[6] This is not a ground of appeal that has a reasonable chance of success.

[7] 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 letter 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.

[8] In response, the Applicant responded with three grounds of appeal. First, he alleged that the General Division did not permit him to present all of his evidence and prevented him from cross-examining the Employer's evidence, although he did not specify in what way this was done. Second, he submitted that the General Division erred in law by finding that he had left his employment voluntarily, although he did not identify in what specific manner the General Division erred. Third, he argues that the General Division made "important errors... by not finding that I was unable to work and disabled", but does not explain how this is a reviewable error.

[9] Having considered these pleadings, I am prepared to grant leave to appeal on the basis that if the natural justice rights of the Applicant are shown to have been breached, this appeal could succeed.

[10] I note, however, that any submissions which simply ask the Appeal Division to re-weigh the evidence and come to a conclusion more favourable to the Applicant are not permissible according to the Act and will not be entertained. An appeal before the Appeal Division is not an appeal *de novo*.

[11] Further, I expect the Applicant to substantiate his natural justice allegations in the 45-day submission period that follows leave to appeal being granted. In doing so, I suspect that it would be of benefit to the parties and myself if the Applicant utilized the recording of the General Division hearing in doing so.

[12] Therefore, for the above reasons, I find that this appeal has a reasonable chance of success and leave to appeal must be granted.

Mark Borer

Member, Appeal Division