Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *N. P. v. Canada Employment Insurance Commission,* 2016 SSTADEI 269
Tribunal File Number: AD-16-260

BETWEEN:

N. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Mark Borer

DATE OF DECISION: May 25, 2016

Canada

DECISION

[1] On January 28, 2016, 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 to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (the DESDA) 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 DESDA also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[4] In his initial application, the Applicant did not articulate any particular error committed by the General Division.

[5] Noting that the Applicant's appeal was not complete because no grounds of appeal were stated, I asked Tribunal staff to contact the Applicant by letter and ask for further details. Specifically, the Tribunal letter asked that he provide full and detailed grounds of appeal as required by the DESDA, 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.

[6]The Applicant responded by way of counsel, stating that the General Division member erred in law and fact. Specifically, he alleged that the member erred by not finding that the Applicant had "continued to accrue greater hours in excess of the 1094 insurable

hours listed on his ROE, and the 347 insurable hours taken into account in his application".

[7] Essentially, the Applicant is arguing that the General Division should have found that he accumulated insurable hours beyond those stated by the Employer and the Commission.

[8] Unfortunately for the Applicant, s. 90 of the *Employment Insurance Act* (the Act) is extremely clear that the Tribunal has no jurisdiction to determine whether or not additional insurable hours exist. Instead, the Act states that all such questions must be referred to the Canada Revenue Agency (the CRA) through a parallel process, and gives timeframes for doing so.

[9] Given the above, the General Division cannot be said to have erred in the manner alleged by the Applicant. I note that the Applicant does not seem to have availed himself of the CRA process.

[10] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the DESDA 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*.

[11] 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 DESDA 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