



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. K. v. Canada Employment Insurance Commission*, 2016 SSTADEI 354

Tribunal File Number: AD-16-816

BETWEEN:

J. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 4, 2016

DECISION

[1] Previously, a General Division member determined that the Applicant should not receive an extension of time to appeal. In due course, the Applicant filed an application for leave to appeal from this discretionary 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] Among other arguments, the Applicant submits that after explicitly asking about how to appeal, she was told by Service Canada and/or the Commission that no further appeal was possible.

[5] While I suspect (based upon correspondence from the Commission to the Applicant contained in the Tribunal file) that she was actually told that appeals were no longer accepted by Service Canada or the Commission, I can understand how this might be confusing to an unrepresented litigant. Although I make no finding on the matter, if true this would demonstrate (contrary to the findings of the General Division member) that the Applicant did indeed have a continuing intention to appeal.

[6] Based upon the above, I conclude that this application has a reasonable chance of success and that this application for leave to appeal must be granted. I note, however, that

I expect the Applicant to make further submissions setting out a full explanation for her delay in filing on time with the General Division.

Mark Borer
Member, Appeal Division