



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 372

Tribunal File Number: AD-16-779

BETWEEN:

S. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 14, 2016

REASONS AND DECISION

[1] Previously, 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* (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 her application, the Applicant alleges that the General Division member did not fully consider her arguments. Specifically, she alleges that the General Division did not properly consider whether or not the Commission followed their own policy in retroactively determining that certain benefits needed to be repaid.

[5] Although the Applicant does not express the case in these terms, she is essentially arguing that the Commission did not act in a judicial manner when they exercised their discretion under s. 52 of the *Employment Insurance Act*. I note that on the face of the record the General Division member does not appear to have considered this argument, although it was raised before him.

[6] For this reason, I am prepared to find that this argument has a reasonable chance of success and that therefore leave to appeal must be granted.

Mark Borer

Member, Appeal Division