



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 349

Tribunal File Number: AD-16-496

BETWEEN:

J. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 12, 2016

REASONS AND DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal from the prior 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* (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] The Applicant submits that the General Division was mistaken when it said that she did not conduct a job search and was therefore unavailable. She now submits evidence of a job search to the Tribunal, and asks that her appeal be allowed.

[5] Although I make no finding on the matter, I note that on the face of the record the General Division member appears to hold (at paragraphs 36 and 40 of his decision) that the determination of whether or not a claimant is available is a discretionary one on the part of the Commission. This is not the case, and could constitute an error of law.

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

Mark Borer
Member, Appeal Division