



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 421

Tribunal File Number: AD-16-915

BETWEEN:

M. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: August 17, 2016

DECISION

[1] Previously, a member of the General Division determined that the appeal of the Applicant from the previous determination of the Commission should be dismissed. In due course, the Applicant filed an application for leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (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] Among other arguments, the Applicant submits that she did not attend the General Division hearing because she “did not know about the Notice of Hearing because I speak very little English”. Because of this, she concludes that she has “been denied procedural fairness”.

[5] I observe (as did the General Division member) that the Applicant appears to have signed for the notice of hearing personally. I also note that it is not clear to me what the Tribunal could have done differently to prevent the alleged breach of the Applicant’s procedural fairness rights.

[6] That being said, I am prepared to accept that this ground of appeal could support a successful appeal. For this reason, I find that this appeal has a reasonable chance of success and that leave to appeal must be granted.

[7] I will expect the Applicant, in writing and in advance of any hearing, to explain the above situation and to substantiate her appeal.

Mark Borer

Member, Appeal Division