



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 438

Tribunal File Number: AD-16-716

BETWEEN:

K. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

LEAVE TO APPEAL DECISION BY: Mark Borer

DATE OF DECISION: August 25, 2016

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 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] In her initial application the Applicant restated a number of the arguments she had previously made to the General Division, but did not reference any of the enumerated grounds of appeal. Instead, she asked that she be able to "explain... her reasons in front of the appeal board [sic]".

[5] Because of the lack of any alleged General Division error and the fact that no ground of appeal had been set out, Tribunal staff contacted the Applicant by letter to ask for further details. Specifically, the Tribunal letter asked that the Applicant provide full and detailed grounds of appeal as required by the Act, and provided examples of what constitutes grounds of appeal. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[6] The Applicant responded by stating that the General Division member made an important error, and then proceeded to repeat much of the evidence and argument she had already made to the General Division member.

[7] Although the Applicant alleges an error of fact, it is clear to me that she is actually asking that I re-hear the case and come to a different conclusion than that already reached by the General Division member.

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

[9] 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 Act 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