



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. N. v. Canada Employment Insurance Commission*, 2016 SSTADEI 488

Tribunal File Number: AD-16-1095

BETWEEN:

D. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision By: Mark Borer

Date of Decision: September 23, 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 his initial application the Applicant repeated the view he expressed to the General Division member that certain received moneys were not earnings that needed to be allocated.

[5] Because these initial submissions did not provide sufficient information, I asked that Tribunal staff contact the Applicant by letter to seek 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 providing additional details, stating that the moneys he received should have been considered "general damages" as opposed to a "retiring allowance". Again, this view had already been expressed to the General Division member.

[7] On the face of the record, the General Division member's decision did in fact consider this argument in detail. Instead of alleging a reviewable error, it appears to me that the Applicant is actually requesting that I re-weigh the evidence and come to a conclusion different than that reached by the 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] It is not sufficient for an applicant to plead that the General Division member was mistaken in his or her conclusions and ask the Appeal Division for a different outcome. In order to have a reasonable chance of success, an 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, even after having been prompted to do so by the Tribunal, I find that this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer

Member, Appeal Division