Social Security
Tribunal of Canada   Tribunal de la sécurité
sociale du Canada

Citation: *C. H. v. Canada Employment Insurance Commission,* 2016 SSTADEI 485

Tribunal File Number: AD-16-765

BETWEEN:

C. H.

Applicant

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 this decision to the Appeal Division.

[2]   According to subsection 58(1) of the *Department of Employment and Social Development Act*, 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 submissions, the Applicant outlines her view that the General Division member made legal and factual errors in dismissing her appeal. Specifically, she alleges that the General Division misunderstood important facts in determining that Appellant was not available while attending school.

[5]   Although I make no finding on this matter, I agree that if proven this could allow a successful appeal. As the evidence in the file discloses a factual basis upon which this argument could be made (such as contrasting the evidence found at GD3-20 with paragraph 35 of the member's decision), I find that this application has a reasonable chance of success and that therefore this application for leave to appeal must be granted.

Mark Borer
Member, Appeal Division