



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *O. R. v. Canada Employment Insurance Commission*, 2016 SSTADEI 497

Tribunal File Number: AD-16-647

BETWEEN:

O. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Mobile Maestria

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: October 5, 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] This application was filed beyond the 30-day deadline. The Applicant explained this delay by noting that he had attempted to retain counsel to assist him in his appeal, and also submitted that he received the decision late. Taking this into account, and noting that for the reasons below I find that this appeal has a reasonable chance of success, it is my view that it would be in the interests of justice to exercise my discretion and allow an extension of time.

[3] 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.

[4] The *Act* also states that leave to appeal is to be refused if the appeal has “no reasonable chance of success”.

[5] In his submissions, the Applicant did not outline any ground of appeal that would have a reasonable chance of success, and did not respond to a Tribunal letter requesting that he do so.

[6] Notwithstanding this, I note that paragraph 21 of the General Division decision says that “[t]he Tribunal’s standard of review is reasonableness with little deference”.

[7] Although I make no finding on the matter, if the General Division member performed a standard of review analysis of the Commission determination instead of conducting a *de novo* hearing, it would be a serious breach of the Applicant's natural justice rights and would necessitate a new hearing.

[8] I therefore find that this application has a reasonable chance of success and that leave to appeal must be granted.

Mark Borer

Member, Appeal Division