



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 515

Tribunal File Number: AD-16-957

BETWEEN:

K. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: October 19, 2016

REASONS AND DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal. 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* (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] The sole issue to be determined by the General Division was whether or not the Applicant was available during the time that she was to receive regular employment insurance benefits.

[5] Initially, the Applicant repeated some of the arguments she had already made to the General Division, and stated that "due to my age and 25 years teaching, I am intitled [sic] and deserved [sic] to receive benifits [sic] from EI [sic]". She also provided information regarding her current financial situation.

[6] Because these initial submissions did not set out in what manner the General Division member was alleged to have erred, Tribunal staff contacted 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.

[7] The Applicant responded by submitting that the General Division member erred in fact and failed to observe a principle of natural justice by not considering evidence that the Applicant was ill during the time in question.

[8] I note that in arguing that she was too ill to work, the Applicant does little to support her view that she was available because this argument suggests that because of this alleged illness she was not truly able to accept employment even if it were offered to her.

[9] Notwithstanding this observation, however, on the face of the record the General Division member did indeed note the Applicant's submissions that she had been ill. The member also observed, based upon the evidence in the file and the Applicant's own statements, that this alleged illness did not appear to have prevented the Applicant from working during some of the time in question.

[10] Having considered the Applicant's submissions, I am not persuaded that she has advanced any arguments that have a reasonable chance of success. Instead, she appears to be asking that I rescind the General Division decision and render a new decision more favourable to her.

[11] 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*.

[12] It is not sufficient for an Applicant to ask the Appeal Division for a different outcome than that already rendered. 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, 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