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

Citation: *K. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 513

Tribunal File Number: AD-16-1127

BETWEEN:

K. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: October 18, 2016

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* 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] This case involves a request to have the Applicant's initial benefit application backdated approximately two years.

[5] In his application for leave to appeal the Applicant repeated many of the arguments he had already made to the General Division, and stated that "I believe it is understandable people would be ignorant of the law". He also explained that he had been waiting for his record of employment, which in his view showed just cause for the delay.

[6] Because these initial submissions did not set out in what manner the General Division member was alleged to have erred, at my request 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 providing a copy of his record of employment, but offered no further submissions or an explanation for why he did so.

[8] I note that the Applicant's views and submissions (including the above record of employment) were already in evidence at the General Division and that on the face of the record the General Division member's decision did in fact consider them. 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.

[9] 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*.

[10] 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