



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 7

Tribunal File Number: AD-16-1100

BETWEEN:

**M. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Mark Borer

Date of Decision: January 13, 2017

## REASONS AND DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal. In due course, the Applicant filed an application for 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] In her application for leave to appeal, among other grounds of appeal, the Applicant alleges that the General Division member demonstrated actual bias in his conduct of the General Division hearing and also that her procedural fairness rights were violated. In support of these two arguments, she cites specific comments made by the member at various times during the hearing.

[5] Allegations of bias go to the heart of the administrative law system and, as stated by the Federal Court of Appeal in *Joshi v. Canadian Imperial Bank of Commerce*, 2015 FCA 92, at paragraph 10:

[B]ias is a term with a precise legal definition. Allegations of bias are of a very serious nature and should not be made without proof...Such allegations are particularly egregious when made against judges, as they attack one of the pillars of

the judicial system, namely the principle that judges are impartial as between the parties who appear before them...

[6] The above applies equally to Tribunal members.

[7] In this case, the allegation of bias has been made on behalf of the Applicant by a member of the Law Society of Upper Canada, who is by virtue of that membership an officer of the court and bound by the *Rules of Professional Conduct*. I therefore find that the allegation has not been made frivolously, and that at the very least the procedural fairness arguments have a reasonable chance of success.

[8] Having found that this application has a reasonable chance of success, leave to appeal must be granted.

*Mark Borer*

Member, Appeal Division