



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 23

Tribunal File Number: AD-15-1250

BETWEEN:

A. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of decision: January 26, 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] Among other arguments, the Applicant alleges that the General Division member demonstrated actual bias in her conduct of the General Division hearing and explains the basis for this view.

[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] While I am prepared to accept that the Applicant has raised an argument that has a reasonable chance of success, I expect and require that the Applicant fully explain (and provide proof for) her allegations prior to any hearing.

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

Mark Borer

Member, Appeal Division