



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 33

Tribunal File Number: AD-17-12

BETWEEN:

W. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

1265767 Ontario Ltd. / Joe's Value Mart

Added Party

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 requesting leave to appeal this decision 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 his submissions, the Applicant outlines his views as to how he had been wronged by the General Division, the Commission, and his Employer. Among other arguments, he alleges that the General Division member should not have permitted the Employer to be added as a party to the appeal.

[5] Although I make no findings regarding the Applicant's submissions, I note that on the face of the record the Applicant voluntarily left his Employment while still employed in a second job. This being so, the General Division member should have considered and applied *Canada (Attorney General) v. Marier*, 2013 FCA 39, but did not.

[6] For this reason, I find that this appeal has a reasonable chance of success and this application for leave to appeal should be granted.

Mark Borer

Member, Appeal Division