



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 27

Tribunal File Number: AD-16-1321

BETWEEN:

T. B.

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 requesting leave to appeal this decision to the Appeal Division.

[2] The Applicant's application to the Appeal Division was filed late. The Applicant's explanation for this is not particularly compelling, and he clearly did not prioritize the filing of this appeal as it was filed over six (6) months late. That being said, I do not see any prejudice resulting from the extension being granted, and have concluded (for the reasons below) that this application has a reasonable chance of success. Therefore, I am prepared to conclude that it is in the interests of justice to allow further time within which this application can be made.

[3] I note that although I requested Commission submissions regarding this application, for unknown reasons they replied by stating that "the Commission will not be filing submissions". Although it is not completely clear, I take this to mean that the Commission does not oppose (but does not necessarily consent to) this application. I come to this conclusion because if the Commission opposed this application it would have taken no additional effort to express this view in their reply, yet they declined to do so.

[4] 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.

[5] The Act also states that leave to appeal is to be refused if the appeal has “no reasonable chance of success”.

[6] Among other arguments, the Applicant submits that a settlement agreement between him and his Employer should be considered as new evidence. In support of this view, he has cited a number of cases of the Federal Court of Appeal. He further submits that this document proves that the Employer has withdrawn the allegation of misconduct, that he did not commit an act of misconduct, and that the General Division member erred by finding to the contrary.

[7] As noted above, the Commission has declined to oppose this application although they were given the opportunity to do so.

[8] If proven, the Applicant’s pleadings could result in a successful appeal. Accordingly, I find that this appeal has a reasonable chance of success and this application for leave to appeal must be granted.

Mark Borer

Member, Appeal Division