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

Citation: *A. H. v. Canada Employment Insurance Commission,* 2017 SSTADEI 28

Tribunal File Number: AD-16-1354

BETWEEN:

**A. H.**

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

Canada

## 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 to the Appeal Division.

[2] The Applicant's application to the Appeal Division was filed late. Although his explanation for this is not particularly compelling, the delay was not a long one. However, as for the reasons below the Commission will not suffer any prejudice from an extension of time being granted, in the interests of justice I allow further time within which this application can be made.

*[3]* Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) 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.

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

[5] This case involves whether or not the Applicant had just cause to voluntarily leave his employment.

[6] In his initial application, the Applicant provided submissions which restated much of the evidence he had previously provided to the General Division. He also repeated a number of allegations regarding his Employer.

[7] Because these initial submissions did not set out a ground of appeal which had a reasonable chance of success, I asked Tribunal staff to contact 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 DESDA, 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.

[8] The Applicant responded by pointing out various facts that he felt were not properly taken into consideration by the General Division member.

[9] Although the Applicant alleged an error of fact had been made, it appears to me that the Applicant is actually asking that I re-weigh the evidence and come to a different conclusion than that reached by the General Division member.

[10] This I cannot do.

[11] 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*.

[12] I note that although the General Division member did not ultimately accept the Applicant's views, on the face of the record he did consider them.

[13] 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, an 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