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

Citation: *R. J. v. Canada Employment Insurance Commission,* 2017 SSTADEI 88

Tribunal File Number: AD-16-1144

BETWEEN:

R. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: March 3, 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 to the Appeal Division.

[2] 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.

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

[4] In his initial application, the Applicant submitted that the General Division member ignored his arguments. The Applicant also made reference to an unspecified pilot project which would permit him to earn income while on claim.

[5] 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.

[6] The Applicant responded by repeating some of the evidence he provided to the General Division member, and made reference to the Digest of Entitlement Principles

(Digest) as well as to an August 2016 pilot project which would allegedly allow him to earn income while on claim.

[7] I note that on the face of the record the General Division member did consider the Applicant's evidence and submissions, including the arguments made above, although the member did not ultimately agree that the Applicant had shown just cause for leaving his employment. I can only repeat the member's comments that the Digest is not binding upon the Tribunal. I also note that voluntary leaving was the only issue before the General Division member, and so I fail to see the relevance of the August 2016 pilot project.

[8] The Applicant is dissatisfied with the General Division member's decision. But in essence, he would like me to re-weigh the evidence and come to a different conclusion than that reached by the General Division member.

[9] This I cannot do.

[10] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the DESDA 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*.

[11] 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, the applicant must explain in some detail how in their view at least one reviewable error set out in the DESDA 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