



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. W. v. Canada Employment Insurance Commission*, 2017 SSTADEI 96

Tribunal File Number: AD-16-1353

BETWEEN:

A. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: March 10, 2017

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 application for leave to appeal, the Applicant stated that he wished to appeal to the Canada Revenue Agency (CRA) regarding his insurable hours. No other ground of appeal was cited by the Applicant.

[5] As the number of insurable hours is directly relevant to this appeal, and as the Applicant seemed to be aware that the CRA and not the Tribunal has jurisdiction over the calculation of insurable hours, I granted a month-long adjournment so that the Applicant could provide evidence that an appeal to the CRA had been made.

[6] No such evidence was received by the Tribunal, and the Applicant has now indicated that he has had difficulty navigating the CRA appeal system and that no appeal has yet been filed with the CRA.

[7] The Applicant has not indicated why he did not attempt to file a CRA appeal much earlier in the process. Nor, as I noted above, has he articulated any other ground of appeal.

[8] 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.

[9] 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 DESDA has been made. Having failed to do so, I find that this application for leave to appeal does not have a reasonable chance of success and must be refused.

[10] If at some later date (but within the one-year statutory maximum) the Applicant does indeed receive a ruling from the CRA on the question of his insurable hours, he should file a rescind or amend application under s. 66 of the DESDA.

Mark Borer

Member, Appeal Division