



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 129

Tribunal File Number: AD-16-1357

BETWEEN:

**J. L.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Mark Borer

Date of Decision: March 29, 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] 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, given my reasoning below, I do not see any prejudice resulting from the extension being granted. 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] 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 DESDA also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[5] In his initial application, the Applicant repeated the arguments and admissions he made to the General Division member but did not identify any particular error committed by the member.

[6] Because these initial submissions did not explain in what manner the General Division member had erred, 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.

[7] The Applicant responded by once again repeating evidence and submissions he had already presented to the General Division member. He also noted that in a different General Division file the appeal of a co-worker in the same situation had been allowed.

[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 already reached by the General Division member.

[9] This I cannot do.

[10] I note that on the face of the record the General Division member did solicit and consider the Applicant's evidence and submissions, even if she did not ultimately accept those submissions. I also note that General Division decisions are in no way binding upon me (or even persuasive). In fact, the reverse is true.

[11] 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 rehear the case *de novo*.

[12] 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 DESDA has been made. Having failed to do so, even after having been prompted to do so by the Tribunal, I find that the Applicant's application for leave to appeal does not have a reasonable chance of success and must be refused.

*Mark Borer*

Member, Appeal Division