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

Citation: *P. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 170

Tribunal File Number: AD-15-1638

BETWEEN:

P. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: April 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 to the Appeal Division.

[2] 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.

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

[4] The Applicant argues that the General Division member did not have all the evidence before her before she made her decision. Specifically, the Applicant is now in possession of a medical report which speaks to whether or not the Applicant's misconduct could be considered "involuntary". The Applicant notes that this medical report directly addresses the requirements of *Canada (Attorney General) v. Bigler*, 2009 FCA 91. He also notes that his representative was unable to obtain the report earlier because he (the Applicant) could not be contacted to gain consent to do so because he had been in rehab.

[5] To assist me in my deliberations, I asked the parties for further submissions as to whether or not the medical note should be accepted as new fact evidence.

[6] The Commission agreed that I may, in certain circumstances, accept additional evidence which is both new and material. They oppose me doing so in this case, however, because they maintain that the test set out in *Canada (Attorney General) v. Chan*, [1994] F.C.J. No 1916, has not been met.

[7] Given the above, I am satisfied that this application has a reasonable chance of success and that leave to appeal must be granted so that the parties can make their arguments in full.

[8] I note that the Applicant states (at AD1B-2) that he "is only requesting permission to submit Crucial Medical documentation [*sic*]".

[9] If I admit the medical note into evidence, it is my intention to order a new hearing before the General Division so that the note can be properly considered. If I do not admit the medical note into evidence, it is my intention to dismiss the appeal since no other error or ground of appeal has been alleged. The parties should prepare their arguments accordingly.

Mark Borer

Member, Appeal Division