



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 171

Tribunal File Number: AD-17-242

BETWEEN:

J. C.

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 this decision 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 submissions, the Applicant does not set out a ground of appeal that has a reasonable chance of success.

[5] Notwithstanding this, I note that there is absolutely no evidence in the record regarding the unemployment rate applicable to the Applicant except for a bald assertion made by the Commission. It is therefore impossible for me to determine how the General Division member (or the Commission before her) determined that the Applicant did not have sufficient insurable hours of employment to qualify for benefits in accordance with the provisions of the *Employment Insurance Act* and the associated regulations.

[6] I note that this evidentiary issue was thoroughly canvassed by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, and that *Jewett* does not seem to have been applied by the Commission or the General Division member.

[7] For these reasons, I find that this appeal has a reasonable chance of success and that this application for leave to appeal must be granted.

Mark Borer

Member, Appeal Division