



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 181

Tribunal File Number: AD-17-62

BETWEEN:

**J. T.**

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: May 1, 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 challenged a number of factual findings made by the General Division member and repeated some of the evidence he had previously provided. He also made certain allegations against his Employer.

[5] I note that although the General Division member did not ultimately accept the Applicant's views, he did consider them (as evidenced by his decision).

[6] Because of this, and to ensure that the Applicant had the opportunity to make his case in full, 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 the views that he had previously expressed to the General Division member. He also added that his hearing was unfair because he was unable to cross-examine his Employer, who was not present.

[8] I note that an employer has no legal duty to participate in a Tribunal hearing, and that the Tribunal has no power to compel an employer to do so. Because of this, the lack of cross-examination cannot be a breach of the principles of natural justice and does not constitute an argument with a reasonable chance of success.

[9] Although the Applicant has also explained why he disagrees with the member's decision, it is clear to me that the Applicant is actually asking that I rehear his case and come to a decision more favourable to him.

[10] This I cannot do.

[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] 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