



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. W. v. Canada Employment Insurance Commission*, 2017 SSTA DEI 191

Tribunal File Number: AD-17-252

BETWEEN:

J. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: May 8, 2017

REASONS AND DECISION

[1] On March 2, 2016, 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 her initial application, the Applicant states that she had mistakenly thought that when she registered for a My Service Canada Account, she was automatically registered for self-employment unemployment benefits. She asks that, as a principle of natural justice, I allow her appeal because "it was [her] intention to be registered."

[5] Because this did not set out a ground of appeal that had a reasonable chance of success, and to ensure that the Applicant had every opportunity to make her 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 concrete examples. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[6] The Applicant replied and explained that her failure to properly register was due to “registration processes [that] are complex and out-of-date.” She further explained that this was, in her view, because of the many failings of the Commission which she then set out in some detail. Finally, she submitted that it is within my jurisdiction in cases such as this to correct the Commission’s “administrative failures” and allow her appeal.

[7] Essentially, the Applicant is arguing that the General Division member should have ignored the sections of the *Employment Insurance Act* and *Employment Insurance Regulations* that set out what is required to qualify for self-employment benefits. Unfortunately for the Applicant, no matter how sympathetic a Tribunal member may be to a specific fact situation, they are not permitted to ignore the law.

[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, even after having been prompted to do so by the Tribunal, this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer

Member, Appeal Division