



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. A. P.*, 2017 SSTADEI 199

Tribunal File Number: AD-17-254

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**A. P.**

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 15, 2017

## **REASONS AND DECISION**

[1] Previously, a member of the General Division determined that the Respondent's appeal should be allowed. In due course, the Commission filed a request for 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] In their initial submissions, the Commission objected to the General Division member's finding that the Respondent's antedate request should be granted but did not explain why in sufficient detail.

[5] As this initial application did not set out a ground of appeal which had a reasonable chance of success, I asked Tribunal staff to contact the Commission by letter to seek further details. Specifically, the Tribunal letter asked that the Commission provide full and detailed grounds of appeal as required by the Act 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.

[6] The Commission responded and more fully explained their views as to how the General Division member had erred by failing to follow specified established jurisprudence and by failing to make certain findings which the member was required to make.

[7] If proven, these amended pleadings could result in a successful appeal. Accordingly, I find that this appeal has a reasonable chance of success and this application for leave to appeal should be granted.

*Mark Borer*

Member, Appeal Division