



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 195

Tribunal File Number: AD-17-302

BETWEEN:

D. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: May 10, 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] This case involves a request that the Applicant's initial application be antedated (backdated).

[5] In his initial application, the Applicant stated that "not all factors were taken into consideration" regarding whether or not he had acted as a "reasonable person would".

[6] Because these submissions did not establish an argument with a reasonable chance of success, and to ensure that the Applicant had every 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 concrete examples. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[7] The Applicant did not respond.

[8] The Commission's initial determination was that the Applicant's claim should not be antedated because the Applicant had not shown good cause for doing so. In his decision, the member considered the test for good cause, and ruled against the Applicant.

[9] It is clear to me that the Applicant disagrees with this conclusion. However, it is equally clear that this application is a request that I rehear his case and come to a conclusion 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 Act 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 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, 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