Citation: *P. R. v. Canada Employment Insurance Commission,* 2017 SSTADEI 206

Tribunal File Number: AD-17-236

BETWEEN:

P. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Klass Investments Inc

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: May 18, 2017

Canada

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 objected to the General Division member's conclusions but did not set out a ground of appeal which had a reasonable chance of success.

[5]   Notwithstanding this, I note that on the face of the record the General Division member may not have applied the correct legal test for voluntary leaving in coming to his decision. I note that (at paragraph 35 of his decision) he appears to have added an additional sentence to the correct test for voluntary leaving. If the member believed that this additional sentence was part of the test, then an error of law was made.

[6] For this reason, 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