



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. Y. v. Canada Employment Insurance Commission*, 2017 SSTADEI 211

Tribunal File Number: AD-17-300

BETWEEN:

L. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: May 24, 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 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 submissions, the Applicant objected to the General Division member's conclusions and repeated her view that certain payments from her Employer were not earnings because they were compensation for damages suffered.

[5] The General Division member is the primary trier of fact, and as such his factual findings are entitled to some deference. However, while I make no finding on the matter, the member may have disregarded the Applicant's evidence in coming to his conclusions.

[6] I also note that the member cited a number of cases at the conclusion of his analysis section that are not otherwise referred to in his decision. This may simply be a typographical error, or it may indicate a deeper flaw with the underlying decision.

[7] Either way, for the above reasons 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