



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 219

Tribunal File Number: AD-17-310

BETWEEN:

J. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: June 1, 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.

[1] 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.

[2] The DESDA also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success."

[3] In her submissions, the Applicant outlines her views as to how the General Division member erred in law and in fact. Specifically, she alleges that the member did not properly consider or answer her arguments that a portion of the settlement she received from her Employer was for specific human rights damages and therefore did not constitute earnings which need be allocated. The Applicant explains in detail the basis for this argument in her application.

[4] Although I make no finding on the matter, I am persuaded that on the face of the record there is a potential evidentiary basis to support the Applicant's arguments and that, if true, they could ground a successful appeal. In particular, I note that (at paragraph 25 of his decision) the General Division member saw "no need" to go beyond the language of the

minutes of settlement even though the Federal Court of Appeal has ruled previously that the wording of any such settlement does not bind the Tribunal.

[5] This leads me to conclude that this application has a reasonable chance of success and that leave to appeal must be granted.

Mark Borer

Member, Appeal Division