



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 222

Tribunal File Number: AD-17-226

BETWEEN:

S. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: June 5, 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] The Applicant's application to the Appeal Division was filed late. The Applicant offered no explanation for this. However, since the delay was not a long one and as I do not see any prejudice resulting from the extension being granted, I am prepared to conclude that it is in the interests of justice to allow further time within which this application can be made.

[3] 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.

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

[5] This case involves the voluntary leaving of employment.

[6] In her initial application, the Applicant repeated statements made earlier to the General Division member but did not allege any particular error in the member's decision.

[7] Because the application did not state a ground of appeal with a reasonable chance of success, Tribunal staff contacted 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 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.

[8] The Applicant responded by once again repeating submissions she had previously made to the General Division member. However, she alleged that, because the member did not accept her arguments, an error of fact had been made.

[9] I note that although it is true that the General Division member did not ultimately accept the Applicant's position, the member did consider it (as evidenced by her decision).

[10] In truth, the Applicant is asking that I re-weigh the evidence and issue a decision more favourable to her than that already rendered by the General Division member.

[11] This I cannot do.

[12] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the DESDA 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*.

[13] In order to have a reasonable chance of success, an applicant must set out in some detail how at least one reviewable error set out in the DESDA has been made. Because the Applicant has failed to do this, even after having been prompted 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