



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. B. S.*, 2016 SSTADEI 208

Tribunal File Number AD-16-449

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

B. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 14, 2016

DECISION: Leave to appeal granted

DECISION

[1] On March 5, 2016, a member of the General Division determined that the appeal of the Respondent from the previous determination of the Commission should be allowed. In due course, the Commission filed a request for leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (Act) 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 Act also states that leave to appeal is to be refused if the appeal has “no reasonable chance of success”.

[4] In their submissions, the Commission outlines their views as to how the General Division member made legal and factual errors in allowing the Respondent’s appeal. Specifically, they allege that the General Division incorrectly applied the established jurisprudence and the *Employment Insurance Act* in determining whether or not certain alleged earnings should be allocated.

[5] If proven, these pleadings could result in a successful appeal. Accordingly, I find that this appeal has a reasonable chance of success and this application for leave to appeal should be granted.

Mark Borer

Member, Appeal Division