Federal Court  Cour fédérale

Date: 20170125

Docket: T-1694-15

Citation: 2017 FC 96

Ottawa, Ontario, January 25, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

KATHERINE MCCRORY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. McCrory, who represents herself in this proceeding, suffers from a number of medical conditions. In 2009, she left her job as a special needs educational assistant due to her deteriorating medical state. She applied for disability benefits under the *Canada Pension Plan* (RSC 1985, c C-8) [CPP] in September 2010. The application was denied, and the denial was maintained upon reconsideration.

[2] Ms. McCrory appealed the negative decision. The appeal was heard by the General Division of the Social Security Tribunal [General Division] and was denied in a decision dated March 9, 2015. Ms. McCrory sought leave to appeal the negative decision to the Appeal Division of the Social Security Tribunal [Appeal Division] arguing that the General Division committed a number of errors. Leave to appeal was denied in a decision dated September 1, 2015.

[3] The Notice of Application seeks, among others, an order quashing the March 9, 2015 decision of the General Division. Ms. McCrory's written submissions focus on the alleged errors in the General Division decision. However, the decision before this Court is that of the Appeal Division. The General Division decision has been considered in the process of assessing whether the Appeal Division committed a reviewable error or rendered an unreasonable decision.

II. Legislative Framework

[4] For ease of reference, relevant portions of the CPP and the *Department of Employment and Social Development Act* (SC 2005, c. 34) [DSED] are reproduced at Appendix A to this Judgment and Reasons.

III. Background

A. *The Applicant*

[5] Ms. McCrory was born in 1961 and was diagnosed at a young age with a neurological condition that affects her balance and dexterity. The condition has gradually progressed throughout her life. In 1993, her symptoms were described as including a tendency to trip easily,

radiating pain from her feet and an unusual sensation on the soles of her feet. She was subsequently assessed for orthotics due to leg weakness, pain and abnormal foot arches.

[6] Between 1995 and 2008, Ms. McCrory was employed as a special needs educational assistant in a school that exclusively served children with cognitive and physical disabilities. Her duties were physical in nature requiring her to lift children from wheelchairs, do exercises with the children and play with them. She reports that by 2007 her neurological disorder had progressed to the point where she required orthotic devices covering her foot and ankle to provide additional stability. She became concerned that she might fall while carrying out her duties.

[7] In 2008, her health further deteriorated. She suffered from episodes of vertigo and nausea. By January 2009, these symptoms rendered her unable to work. She consulted with medical experts and was prescribed medication, vestibular physiotherapy and balance retraining. In April 2009, she attempted to return to work but symptoms of vertigo and nausea prevented her from carrying out her duties. She pursued vestibular physiotherapy but her neurological condition and bad knees prevented her from performing all of the exercises.

[8] Ms. McCrory's vertigo is triggered at least in part by florescent lighting. No special request for accommodation was made in advance of the hearing of this Application, however efforts were made to minimize florescent lighting in the courtroom and Ms. McCrory was permitted to wear a ball cap during oral submissions.

B. *General Division Decision*

[9] Ms. McCrory had appealed the denial decision to the Office of the Commissioner of Review Tribunals. The General Division noted that by virtue of Section 257 of the *Jobs, Growth and long-term Prosperity Act*, SC 2012, c. 19 the appeal was deemed to have been filed with the General Division.

[10] In its decision, the General Division set out the requirements to qualify for a disability pension as set out at subparagraph 44(1)(b) of the CPP: (1) be under 65 years of age; (2) not be in receipt of the CPP retirement pension; (3) be disabled; and (4) have made valid contributions to the CPP for not less than the Minimum Qualifying Period [MQP]. The General Division noted that an applicant will only be considered disabled where they establish: (1) they suffer from a severe and prolonged mental or physical disability as set out at subparagraph 42(2)(a) of the CPP; and (2) they suffered from that severe and prolonged disability on or before the end of the MQP date.

[11] The General Division concluded that December 31, 2011 was the MQP date in this case, that there was no issue regarding the MQP date, and that it must decide "if it is more likely than not that the Appellant had a severe and prolonged disability on or before the date of the MQP."

[12] The General Division reviewed Ms. McCrory's medical and health conditions, the evidence she provided in the course of the oral hearing, and the medical evidence in support of the application. The General Division noted, relying on *Villani v Canada (Attorney General)*,

2001 FCA 248, that the "severe" criterion must be assessed in a real world context and therefore consider factors such as age, level of education, language proficiency and past work and life experience at the MQP point. The General Division concluded Ms. McCrory had many transferable skills and the characteristics needed to participate in substantially gainful employment. It was noted that she had the burden of establishing that her medical condition prevented her from working prior to the MQP date and that deterioration or new conditions arising after the MQP could not be considered in assessing the disability claim.

[13] The General Division did not dispute that Ms. McCrory suffered from a neurological disease, noting that it is not the diagnosis of disease but rather the capacity to work that determines the issue of "severe disability" under the CPP. The General Division further noted that it was not the neurological disease but rather vertigo that caused her to stop working.

[14] In addressing the evidence, the General Division did not attribute significant weight to the medical evidence or opinion of the treating physician citing: (1) concerns with the timing and purpose of referrals; (2) a concern that the physician had adopted the role of an advocate in advancing the claim for disability benefits; and (3) inconsistencies between reports completed that were contemporaneous with treatment and referral decisions and information provided after the rejection of Ms. McCrory's claim. The decision also cites concerns relating to the absence of relevant documentation and the generic assessment provided by a specialist relating to Ms. McCrory's ability to return to work. The General Division found that Ms. McCrory's evidence was "… vague, ambiguous and was not supported by evidence contained in the file".

[15] The General Division concluded that "… the Appellant failed to provide reliable and/or persuasive evidence that she was unable to maintain substantially gainful employment prior to December 31, 2011." The General Division did not address the question of prolonged disability having found that Ms. McCrory's had not established a severe disability.

C. *Appeal Division Decision*

[16] The Appeal Division identified that the issue before it was "… whether the appeal has a reasonable chance of success" which, it noted, equates to an arguable case. It further noted that the grounds of appeal are limited to those set out in section 58 of the DSED.

[17] The Appeal Division addressed each of the issues raised by Ms. McCrory in her leave application but found little support for the arguments made, providing reasons for its conclusions. In addition, the Appeal Division emphasized that the General Division had the benefit of hearing Ms. McCrory, assessing her oral testimony, and considering all the reasons she gave to support her assertion as to why she could not return to work prior to the date of her MQP. It noted the General Division's finding that Ms. McCrory was vague in her explanations, and that her testimony was not supported by the medical evidence and concluded that this finding was available based on the testimony and evidence.

[18] In response to Ms. McCrory's submissions that the General Division had erred by failing to identify what transferable skills she was assessed to possess, the Appeal Division noted that no authority was citied in support of this position. It was not satisfied that an error had been committed. It further noted, however, that even if such a duty existed, the failure of Ms.

McCrory to attempt to find and maintain any substantially gainful occupation after 2009 would render the error immaterial. It also concluded that any such duty was inconsistent with jurisprudence establishing that it is not the function of the tribunal or the respondent to define or describe the type of employment an applicant is capable of performing. Finally, the Appeal Division decision held that the General Division finding that the attending physician had become an advocate was consistent with the evidence and that "[h]aving examined the General Division decision and Tribunal record, the Tribunal is not satisfied that Counsel's submissions give rise to a ground of appeal that would have a reasonable chance of success".

IV. Standard of Review

[19] The jurisprudence establishes, and the parties do not dispute, that the applicable standard of review is reasonableness when it comes to judicial review of a decision regarding leave to appeal from the Social Security Tribunal (*Tracey v Attorney General of Canada*, 2015 FC 1300 at paras 17-23 [*Tracey*], *Attorney General of Canada v Hoffman*, 2015 FC 1348 at para 27 [*Hoffman*], see also: *Atkinson v Canada (Attorney General)*, 2014 FCA 187 at paras 24-26). As stated in *Hoffman* at paragraph 33, "[a] high level of deference applies when this Court is reviewing the SST-AD's interpretation of its own statute." (citing *Tracey* and *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 30 and 39).

[20] Applying a reasonableness standard of review, this Court may only intervene where the Appeal Division's decision-making process is not justified, transparent and intelligible. A reviewing court will have to determine if the Appeal Division's decision "… falls within a range

of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*])

V. Analysis

A. *New Evidence*

[21] Counsel for the respondent noted that Exhibits "6" and "23" of Ms. McCrory's November 5, 2015 affidavit filed in support of this Application did not form part of the Certified Tribunal Record [CTR] and were therefore inadmissible on judicial review. Exhibit "6" is a one page letter dated July 27, 2010 from Reinhold Rehabilitation Services Ltd reporting to Dr. Robertson that Ms. McCrory had been reassessed and had made good progress in her vestibular recovery. Exhibit "23" is a 12 page document also from Reinhold Rehabilitation Services containing: (1) a one page fax cover sheet; (2) a one page treatment calendar; (3) one page of notes; (4) a three page vestibular assessment; (5) a two page letter dated April 6, 2010 from Reinhold Rehabilitation Services Ltd providing an initial report to Dr. Robertson; (6) a second copy of the letter found at Exhibit "6"; and (7) three pages of exercise instructions.

[22] I have reviewed the CTR and am unable to identify any of the documents contained in Exhibits "6" and "23". It appears that this is the documentation the General Division noted was absent from the file and drew a negative inference from the fact that it was not submitted.

[23] Judicial review is intended to determine whether the decision being challenged is lawful based on the evidence that was placed before the decision-maker, it is not an assessment of the

merits of the issues under review. While new evidence will be considered on judicial review in very limited circumstances, those circumstances are not engaged here (*Tracey* at para 28 citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 14 to 20). Exhibits "6" and "23" were not before the General Division or the Appeal Division and have not been considered by the Court in considering this judicial review application.

B. *Was the Decision Reasonable?*

[24] Ms. McCrory argues that the General Division, and by extension the Appeal Division, committed a number of errors. She submits that medical evidence was ignored or not considered and that unchallenged medical evidence was mischaracterized. She submits the conclusion that her attending physician had become an advocate for her claim was unreasonable, that her working capacity and transferable skills were unreasonably addressed and that the decision-maker's reliance on small inconsistencies, conjecture and flawed inferences to deny her claim was contrary to the overwhelming evidence corroborating the claim. While Ms. McCrory very ably advanced her arguments before the Court, in writing and in her oral submissions, I am not convinced that the Appeal Division decision was unreasonable.

[25] In considering the application for leave to appeal, the Appeal Division correctly noted that it was required to refuse leave if satisfied that an appeal had no reasonable chance of success on one or more of the three grounds enumerated at subsection 58(1) of the DSED.

[26] Ms. McCrory submits that the uncontradicted medical evidence of the interrelationship between her neurological disease, her vestibular condition and her inability to work was ignored. I respectfully disagree. The Appeal Division reasonably determined that the 2011 and 2014 reports of Dr. Baker were considered and addressed. The Appeal Division decision also noted that the later report, prepared in 2014, did not speak to Ms. McCrory's condition as of her MQP date. These conclusions were reasonably available.

[27] The Appeal Division addressed the 2011 medical report noting it was general in nature. With respect to the 2014 report, it was prepared in response to a request for an opinion on whether Ms. McCrory's neurological disease was interfering with her ability to complete vestibular physiotherapy. The report noted that Ms. McCrory was assessed only once in 2011, sets out general information relating to those who suffer from the neurological disorder and then opines that the disorder "should be considered a disability". This conclusion is not inconsistent with the Appeal Division and General Division decisions, which took no issue with Ms. McCrory's degenerative neurological disease or her other medical conditions. The issue was whether, as a result of those conditions, she suffered from a severe and prolonged disability on or before December 31, 2011. It was not unreasonable for the Appeal Division to conclude that the 2014 medical report describing her as having a disability did not establish a severe and prolonged disability on or before December 31, 2011.

[28] With respect to Ms. McCrory's submissions that there was a failure to consider the totality of her medical conditions at the time of the MQP, again I am not persuaded. The Appeal Division addressed this issue noting that the General Division identified and considered her

various medical conditions. The conclusion that this argument could not ground an appeal was reasonably open to the Appeal Division.

[29] The Appeal Division considered Ms. McCrory's submissions that the General Division had discounted evidence, and relied on minor inconsistencies to conclude that her testimony was "vague, ambiguous, and was not supported by the evidence". It noted that the General Division was in a position to assess Ms. McCrory's testimony. While Ms. McCrory takes issue with the assessment of her evidence and the conclusions reached, the Appeal Division did not unreasonably defer to the General Division's characterization of her testimony. It was also not unreasonable for the Appeal Division to conclude that the issues raised with respect to the General Division's findings of inconsistency between Ms. McCrory's testimony and the documentary evidence were not issues that disclosed a reasonable chance of success on appeal.

[30] Ms. McCrory's argument that the reasoning leading to the Appeal Division's conclusion that it would place little weight on her attending physician's evidence or opinions was perverse was also addressed in the Appeal Division decision. The Appeal Division again concluded that the General Division finding was not inconsistent with the evidence and therefore that it could not constitute a ground of appeal that would have a reasonable chance of success. I am of the opinion that this conclusion was reasonably available to the Appeal Division.

[31] The Appeal Division reviewed the evidence and noted the physician's reference to the "need to craft a letter". The General Division had also expressed concern with the delay in referring Ms. McCrory to a specialist in light of the alleged deterioration of her neurological

disorder, and noted that when a referral was ultimately made in 2011, it appeared to be in response to the respondent's request for notes and records, not because of complaints or visits by Ms. McCrory. Administrative tribunals are frequently presented with questions that do not lead to a single result. These questions often give rise to a number of possible, reasonable conclusions and in such circumstances a reviewing Court will only intervene where the outcome does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 11 citing *Dunsmuir* at paras 47 and 48).

[32] With respect to the findings relating to Ms. McCrory's working capacity and her transferable skills, again I am not convinced that the Appeal Division erred in concluding that the General Division decision did not reflect any error in law or disclose a ground of appeal that would have a reasonable chance of success. The Appeal Division reasonably concluded based on the jurisprudence, that there was no duty on the General Division to identify transferable skills. Again, while Ms. McCrory disagrees with the conclusions reached on the question of her employability in a real world context, the fact remains that the General Division considered her real world circumstances within the context of the medical evidence and the findings reached. Ms. McCrory's good faith disagreement with the findings do not, unfortunately, render the outcome unreasonable or establish a reasonable chance of success on appeal.

VI. Conclusion

[33] While I am sympathetic to the circumstances Ms. McCrory has presented in this Application, there is simply no basis upon which I can conclude that the Appeal Division erred

or reached findings and a conclusion that were unreasonable. The decision is justified, transparent and intelligible. The application is dismissed.

[34] Neither party has sought costs and none will be awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No costs are awarded.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1694-15
STYLE OF CAUSE:	KATHERINE MCCRORY v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HAMILTON, ONTARIO
DATE OF HEARING:	NOVEMBER 2, 2016
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JANUARY 25, 2017

APPEARANCES:

Katherine McCrory	SELF-REPRESENTED
Jennifer Hockey	FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT

APPENDIX A

Canada Pension Plan, R.S.C., 1985, c. C-8

[…]

42(2) For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and

(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person — including a contributor referred to in subparagraph 44(1)(b)(ii) — be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

[…]

44 (1) Subject to this Part,

[…]

(b) a disability pension shall be paid to a contributor who has not reached sixty-five years of age, to whom no retirement pension is

[…]

42(2) Pour l'application de la présente loi :

a) une personne n'est considérée comme invalide que si elle est déclarée, de la manière prescrite, atteinte d'une invalidité physique ou mentale grave et prolongée, et pour l'application du présent alinéa :

(i) une invalidité n'est grave que si elle rend la personne à laquelle se rapporte la déclaration régulièrement incapable de détenir une occupation véritablement rémunératrice,

(ii) une invalidité n'est prolongée que si elle est déclarée, de la manière prescrite, devoir vraisemblablement durer pendant une période longue, continue et indéfinie ou devoir entraîner vraisemblablement le décès;

b) une personne est réputée être devenue ou avoir cessé d'être invalide à la date qui est déterminée, de la manière prescrite, être celle où elle est devenue ou a cessé d'être, selon le cas, invalide, mais en aucun cas une personne — notamment le cotisant visé au sous-alinéa 44(1)b)(ii) — n'est réputée être devenue invalide à une date antérieure de plus de quinze mois à la date de la présentation d'une demande à l'égard de laquelle la détermination a été faite.

[…]

44 (1) Sous réserve des autres dispositions de la présente partie :

[…]

b) une pension d'invalidité doit être payée à un cotisant qui n'a pas atteint l'âge de soixante-cinq ans, à qui aucune pension de retraite n'est

payable, who is disabled and who

(i) has made contributions for not less than the minimum qualifying period,

(ii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor's application for a disability pension was actually received, or

(iii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made;

[…]

60 (1) No benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.

[…]

81 (1) Where

[…]

(b) an applicant is dissatisfied with any decision made under section 60,

[…]

the dissatisfied party or, subject to the regulations, any person on behalf thereof may, within ninety days after the day on which the dissatisfied party was notified in the prescribed manner of the decision or determination, or within such longer period as the Minister may either before or after the expiration of those ninety days allow, make a request to the Minister in the prescribed form and manner for

payable, qui est invalide et qui :

(i) soit a versé des cotisations pendant au moins la période minimale d'admissibilité,

(ii) soit est un cotisant à qui une pension d'invalidité aurait été payable au moment où il est réputé être devenu invalide, si une demande de pension d'invalidité avait été reçue avant le moment où elle l'a effectivement été,

(iii) soit est un cotisant à qui une pension d'invalidité aurait été payable au moment où il est réputé être devenu invalide, si un partage des gains non ajustés ouvrant droit à pension n'avait pas été effectué en application des articles 55 et 55.1;

[…]

60 (1) Aucune prestation n'est payable à une personne sous le régime de la présente loi, sauf si demande en a été faite par elle ou en son nom et que le paiement en ait été approuvé selon la présente loi.

[…]

81 (1) Dans les cas où :

[…]

b) un requérant n'est pas satisfait d'une décision rendue en application de l'article 60,

[…]

ceux-ci peuvent, ou, sous réserve des règlements, quiconque de leur part, peut, dans les quatre-vingt-dix jours suivant le jour où ils sont, de la manière prescrite, avisés de la décision ou de l'arrêt, ou dans tel délai plus long qu'autorise le ministre avant ou après l'expiration de ces quatre-vingt-dix jours, demander par écrit à celui-ci, selon les modalités prescrites, de réviser la décision ou

a reconsideration of that decision or determination.

[…]

(2) The Minister shall reconsider without delay any decision or determination referred to in subsection (1) or (1.1) and may confirm or vary it, and may approve payment of a benefit, determine the amount of a benefit or determine that no benefit is payable, and shall notify in writing the party who made the request under subsection (1) or (1.1) of the Minister's decision and of the reasons for it.

(3) The Minister may, on new facts, rescind or amend a decision made by him or her under this Act.

[…]

82 A party who is dissatisfied with a decision of the Minister made under section 81, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act.*

l'arrêt.

[…]

(2) Le ministre reconsidère sans délai toute décision ou tout arrêt visé au paragraphe (1) ou (1.1) et il peut confirmer ou modifier cette décision ou arrêt; il peut approuver le paiement d'une prestation et en fixer le montant, de même qu'il peut arrêter qu'aucune prestation n'est payable et il doit dès lors aviser par écrit de sa décision motivée la personne qui a fait la demande en vertu des paragraphes (1) ou (1.1).

3) Le ministre peut, en se fondant sur des faits nouveaux, annuler ou modifier une décision qu'il a lui-même rendue conformément à la présente loi.

[…]

82 La personne qui se croit lésée par une décision du ministre rendue en application de l'article 81, notamment une décision relative au délai supplémentaire, ou, sous réserve des règlements, quiconque de sa part, peut interjeter appel de la décision devant le Tribunal de la sécurité sociale, constitué par l'article 44 de la Loi sur le *ministère de l'Emploi et du Développement social*.

Department of Employment and Social Development Act, S.C. 2005, c. 34

Appeal — time limit

52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,

(a) in the case of a decision made under the Employment Insurance Act, 30 days after the day on which it is communicated to the appellant; and

Modalités de présentation

52 (1) L'appel d'une décision est interjeté devant la division générale selon les modalités prévues par règlement et dans le délai suivant :

a) dans le cas d'une décision rendue au titre de la Loi sur l'assurance-emploi, dans les trente jours suivant la date où l'appelant reçoit communication de la décision;

(b) in any other case, 90 days after the day on which the decision is communicated to the appellant.

b) dans les autres cas, dans les quatre-vingt-dix jours suivant la date où l'appelant reçoit communication de la décision.

(2) The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

(2) La division générale peut proroger d'au plus un an le délai pour interjeter appel.

53 (1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

53 (1) La division générale rejette de façon sommaire l'appel si elle est convaincue qu'il n'a aucune chance raisonnable de succès.

(2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et, selon le cas, au ministre ou à la Commission, et à toute autre partie.

(3) The appellant may appeal the decision to the Appeal Division.

(3) L'appelant peut en appeler à la division d'appel de cette décision.

54 (1) The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part or give the decision that the Minister or the Commission should have given.

54 (1) La division générale peut rejeter l'appel ou confirmer, infirmer ou modifier totalement ou partiellement la décision visée par l'appel ou rendre la décision que le ministre ou la Commission aurait dû rendre.

(2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et, selon le cas, au ministre ou à la Commission, et à toute autre partie.

55 Any decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision and any other prescribed person.

55 Toute décision de la division générale peut être portée en appel devant la division d'appel par toute personne qui fait l'objet de la décision et toute autre personne visée par règlement.

56 (1) An appeal to the Appeal Division may only be brought if leave to appeal is granted.

56 (1) Il ne peut être interjeté d'appel à la division d'appel sans permission.

(2) Despite subsection (1), no leave is necessary in the case of an appeal brought under subsection 53(3).

(2) Toutefois, il n'est pas nécessaire d'obtenir une permission dans le cas d'un appel interjeté au titre du paragraphe 53(3).

57 (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

(a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and

(b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

58 (1) 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) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

(3) The Appeal Division must either grant or refuse leave to appeal.

57 (1) La demande de permission d'en appeler est présentée à la division d'appel selon les modalités prévues par règlement et dans le délai suivant :

a) dans le cas d'une décision rendue par la section de l'assurance-emploi, dans les trente jours suivant la date où l'appelant reçoit communication de la décision;

b) dans le cas d'une décision rendue par la section de la sécurité du revenu, dans les quatre-vingt-dix jours suivant la date où l'appelant reçoit communication de la décision.

(2) La division d'appel peut proroger d'au plus un an le délai pour présenter la demande de permission d'en appeler.

58 (1) Les seuls moyens d'appel sont les suivants :

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

(3) Elle accorde ou refuse cette permission.

(4) The Appeal Division must give written reasons for its decision to grant or refuse leave and send copies to the appellant and any other party.

(5) If leave to appeal is granted, the application for leave to appeal becomes the notice of appeal and is deemed to have been filed on the day on which the application for leave to appeal was filed.

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

(2) The Appeal Division must give written reasons for its decision and send copies to the appellant and any other party.

(4) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et à toute autre partie.

(5) Dans les cas où la permission est accordée, la demande de permission est assimilée à un avis d'appel et celui-ci est réputé avoir été déposé à la date du dépôt de la demande de permission.

59 (1) La division d'appel peut rejeter l'appel, rendre la décision que la division générale aurait dû rendre, renvoyer l'affaire à la division générale pour réexamen conformément aux directives qu'elle juge indiquées, ou confirmer, infirmer ou modifier totalement ou partiellement la décision de la division générale.

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et à toute autre partie.