

Citation: *R. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 573

Appeal No. AD-14-125

BETWEEN:

**R. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER : Mark BORER

DATE OF DECISION : May 8, 2015

DECISION : Appeal allowed

## **DECISION**

[1] The appeal is allowed. The case will be returned to the General Division for reconsideration.

## **INTRODUCTION**

[2] On January 22, 2014, a member of the General Division determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. In due course, the Appellant appealed to the Appeal Division. On March 26, 2015, leave to appeal was granted.

[3] This appeal was decided on the record.

## **ANALYSIS**

[4] Among other arguments, the Appellant submits that the General Division member erred by finding that the burden of proof in cases of misconduct rests with the Appellant when in fact it does not. She asks that her appeal be allowed.

[5] The Commission concedes that the General Division member erred in the manner alleged, and further concedes that the burden of proof rests with the Employer and the Commission. Notwithstanding this, however, the Commission submits that they met the correct burden of proof and that the General Division member “correctly applied the relevant provisions of the legislation and the case law to the facts of this case when arriving at its decision”. They ask that the appeal be dismissed.

[6] In essence, the Commission is arguing that even though the member did not properly determine where the onus of proof lies, the decision is otherwise sound and should be upheld.

[7] I cannot agree. By wrongly determining the onus of proof the General Division member erred in law, reviewable on the correctness standard. As such, this appeal must be allowed and a new hearing must be ordered so that proper findings can be made.

## **CONCLUSION**

[8] The appeal is allowed. The case will be returned to the General Division for reconsideration.

*Mark Borer*

Member, Appeal Division