

Citation: *A. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 671

Appeal No. AD-13-905

BETWEEN:

**A. W.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: June 1, 2015

DECISION: Leave to appeal granted

## DECISION

[1] On February 20, 2013, a panel of the board of referees (the Board) determined that the appeal of the Appellant from the previous determination of the Commission should be dismissed. On November 13, 2013, the Appellant filed an application for leave to appeal to the Appeal Division.

[2] This application was filed late. The Appellant submits that he was waiting for the results of his criminal trial because his acquittal would prove that he had not committed misconduct and should therefore receive benefits.

[3] I accept that the Appellant has shown a continuing intention to appeal, and for the reasons below also accept that this appeal has a reasonable chance of success. Because of this and in the interests of justice, I allow further time within which this application can be made.

[4] Subsection 58(1) of the *Department of Employment and Social Development Act* states that the only grounds of appeal are that:

- (a) The General Division [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division [or the Board] 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.

[5] The *Act* also states that leave to appeal is to be refused if the appeal has “no reasonable chance of success”.

[6] The Appellant submits that as he has now been acquitted by an Ontario court, it is clear that he was not guilty of misconduct since he did not commit the act in question.

[7] Although I make no finding on the matter, I note that the Board does not appear to have considered or applied *Canada (Attorney General) v. Lavallée*, 2003 FCA 255, and may thereby have committed a reviewable error.

[8] I therefore find that this application has a reasonable chance of success. For that reason, this application for leave to appeal must be granted.

*Mark Borer*

Member, Appeal Division