

Citation: *A. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 906

Appeal No. AD-13-905

BETWEEN:

A. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: July 23, 2015

DECISION: Appeal allowed

DECISION

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

INTRODUCTION

[2] 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. The Appellant appealed that decision to the Appeal Division and on June 1, 2015, leave to appeal was granted.

[3] This decision was decided on the record.

ANALYSIS

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

[5] In my decision granting leave to appeal I noted that the Board did not appear to have considered or applied *Canada (Attorney General) v. Lavallée*, 2003 FCA 255, and may thereby have committed a reviewable error.

[6] The Commission opposes the Appellant's appeal. The Commission does, however, concede that the appeal should be allowed because the Board failed to state and apply the correct legal test on the issue before them, as they were required to do.

[7] I agree with the parties that this appeal must be allowed. I find that the Board failed to properly state and apply the law on the issue before it. The correct remedy is for a General Division hearing to be ordered.

CONCLUSION

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

Mark Borer

Member, Appeal Division