



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 47

Appeal No. AD-13-702

BETWEEN:

D. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 27, 2016

DECISION: Appeal allowed

Canada

DECISION

[1] On consent, the appeal is allowed in part. The decision of the board of referees is varied in accordance with these reasons.

INTRODUCTION

[2] On January 29, 2013, a panel of the board of referees (the Board) determined that the appeal of the Employer from the previous determination of the Commission should be allowed. In due course, the Appellant appealed that decision to the Appeal Division and leave to appeal was granted.

[3] On November 3, 2015, a teleconference hearing was held. Both the Appellant and the Commission attended and made submissions. The Appellant's representative was also present.

ANALYSIS

[4] This case involves a finding of misconduct.

[5] In my decision granting leave to appeal, I held at paragraph 6 that:

Although I make no finding on the matter, I note that on the face of the record the Board may not have properly stated and applied the law applicable in cases of suspensions for misconduct. Instead, the Board appears to have applied the law applicable in cases of dismissal for misconduct, even though they found that the Appellant had been suspended.

[6] In his submissions before me, the Appellant admitted that he committed misconduct within the meaning of the *Employment Insurance Act* (the Act). He noted, however, that he was not fired for misconduct, but was only suspended, and asked that the decision be changed to reflect this.

[7] The Commission, for their part, admits that the Board erred in the manner alleged by the Appellant and identified in my leave to appeal decision. They have no objection to

the Board decision being amended accordingly, and agree that this will result in a reduced overpayment.

[8] It is clear from the Board decision that they were confused as to what section of the Act to apply, but that they concluded (as the Appellant admitted before me) that the Appellant was suspended and that misconduct took place. Although their analysis of the case was sound, they applied s. 30 instead of s. 31.

[9] I therefore find that the decision of the Board should be varied so that it is clear that the Appellant was suspended for misconduct within the meaning of s. 31 of the Act rather than dismissed as per s. 30.

CONCLUSION

[10] Therefore, on consent, the appeal is allowed in part. The decision of the board of referees is varied in accordance with these reasons.

Mark Borer

Member, Appeal Division