

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131003

Docket: A-184-13

Citation: 2013 FCA 235

**CORAM: BLAIS C.J.
DAWSON J.A.
O'REILLY J.A. (*ex officio*)**

BETWEEN:

LOI THANH VO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on October 01, 2013.

Judgment delivered at Calgary, Alberta, on October 03, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

CONCURRED IN BY:

**BLAIS C.J.
O'REILLY J.A.
(*ex officio*)**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] Subject to certain exceptions which do not arise on the facts of this case, subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c.23 (Act) disqualifies a claimant from receiving unemployment benefits if the claimant lost any employment because of his or her misconduct.

[2] The Canada Employment Insurance Commission (Commission) decided that Mr. Vo, the applicant, was not entitled to receive unemployment benefits under the Act because he lost his employment on the basis of his own misconduct.

[3] The Board of Referees (Board) then dismissed the applicant's appeal to it from the Commission's decision.

[4] Subsequently, an Umpire dismissed the applicant's appeal from the decision of the Board (CUB 80743). The Umpire found the Board's decision to be well-founded in fact and in law.

[5] The applicant now seeks judicial review of the decision of the Umpire.

[6] The applicant's employer provided documentation to the Commission (including two witness statements) which stated that the applicant was dismissed from his employment for cause because he violated the employer's workplace violence policy. According to the employer, the applicant started an argument with a co-worker which ended with the applicant threatening to stab the co-worker with a tool. As a result, the applicant was told he was being dismissed for cause. Shortly thereafter, the applicant stabbed the plant superintendent.

[7] Before the Board and the Umpire, the applicant submitted that he was framed by co-workers who falsely claimed that he made threats. However, in its decision the Board wrote that during the hearing before it the applicant admitted to threatening co-workers when they would not listen to him. On the evidence before it, including the applicant's admission, the Board accepted that the

applicant was dismissed on the ground that he had threatened one or more co-workers, and this constituted misconduct within the meaning of subsection 30(1) of the Act.

[8] On this application, the applicant again argues that his co-workers conspired and fabricated their story that he threatened a co-worker. He says that he only hit or stabbed the superintendent after he had been told that he was being dismissed. He claims he reacted in this manner because he was angry at being fired in such an unfair manner.

[9] However, as explained to the applicant at the hearing, as a court sitting on judicial review we are not permitted to substitute our view of the evidence for that of the trier of fact. The Umpire could only interfere with the Board's finding of fact if they were unreasonable. In turn, we may only interfere with the decision of the Umpire if he applied the reasonableness standard of review incorrectly.

[10] This means we are unable at law to find that the applicant's co-workers conspired against him. We are limited to searching for reviewable error on the part of the Umpire and returning the case to the office of the Chief Umpire if such error is found.

[11] In the present case, the Board had the opportunity to hear the applicant's explanation. It was open to it on the evidence to prefer the information provided by the employer to that provided by the applicant. This is particularly so when the applicant did not provide any written statement from another co-worker to support his version of events and when he admitted before the Board to threatening co-workers.

[12] The applicant has not suggested any error that would render the Umpire's decision unreasonable.

[13] Therefore, I would dismiss the application for judicial review. The respondent does not seek costs, therefore I would not award costs.

"Eleanor R. Dawson"

J.A.

"I agree
Pierre Blais C.J."

"I agree
O'Reilly J.A. (ex officio)"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-184-13

STYLE OF CAUSE: LOI THANH VO v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: OCTOBER 1, 2013

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: BLAIS C.J.
O'REILLY J.A. (*ex officio*)

DATED: OCTOBER 03, 2013

APPEARANCES:

Loi Thanh Vo APPLICANT
(ON HIS OWN BEHALF)

Paige Atkinson FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Calgary, Alberta