

Date: 20071120

Docket: A-67-07

Citation: 2007 FCA 371

**CORAM: NOËL J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

HUGO CARON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Montréal, Quebec, on November 20, 2007.

Judgment delivered from the bench at Montréal, Quebec, on November 20, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Montréal, Quebec, on November 20, 2007)

NOËL J.A.

[1] This is an application for judicial review of a decision by Umpire Forget dated December 14, 2006, which confirmed a prior decision of a Board of Referees disentitling the applicant from receiving employment insurance benefits on the ground that he was operating a business.

[2] The Umpire also refused to interfere with the finding by the Board of Referees that the applicant had knowingly made nine false or misleading declarations.

[3] The applicant chiefly criticizes the Board of Referees for failing to consider the criteria set out in subsection 30(3) of the *Employment Insurance Regulations*, SOR/96-332, and the Umpire for not intervening to remedy this omission.

[4] In our view, the Board of Referees did not have to consider the criteria in subsection 30(3) on the facts of this case. The Board of Referees concluded from the evidence that the applicant was operating a business on his own account in the same manner as his associate, Mr. Adler, who devoted all his time to it. Under these circumstances, the evidence did not support the exception set out in subsection 30(3). Furthermore, it is our understanding that this exception was not argued before the Board of Referees.

[5] The evidence supported the Board of Referees' finding with respect to the penalties, and the Umpire was correct in upholding them. Despite the fact that the Board's reasons do not explain why the false declarations had been made knowingly, the evidence unequivocally established that the applicant knew that he was not entitled to benefits when he made these declarations.

[6] The application for judicial review will be dismissed with costs.

“Marc Noël”

J.A.

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-67-07

STYLE OF CAUSE: HUGO CARON
v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Montréal

DATE OF HEARING: November 20, 2007

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OF THE COURT BY:** NOËL J.A.
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**DELIVERED FROM
THE BENCH BY:** NOËL J.A.

APPEARANCES:

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Nicholas Banks FOR THE RESPONDENT
Pauline Leroux

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