

Date: 20130624

Docket: A-352-12

Citation: 2013 FCA 165

**CORAM: SHARLOW J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

GRAHAM C. ADAMS JR.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on June 24, 2013.

Judgment delivered from the Bench at Halifax, Nova Scotia, on June 24, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on June 24, 2013)

STRATAS J.A.

[1] Mr. Adams applies for judicial review from the decision of the Umpire on May 31, 2012 (file CUB 77603A).

[2] The Umpire upheld a decision of the Board of Referees which, in turn, upheld a decision of the Commission.

[3] The Commission decided to exclude a period of employment from the calculation of Mr. Adams' claim for benefits under the *Employment Insurance Act*, S.C. 1996, c. 23. The Commission found that Mr. Adams lost his employment because he engaged in misconduct. Under subsection 30(6) of the Act, insurable hours accumulated in employment that is lost by misconduct are excluded when calculating benefits under section 14 of the Act or when calculating the maximum number of weeks of benefits under subsection 12(2) of the Act.

[4] In his notice of application, Mr. Adams seeks only an amendment to his service record maintained by the Commission to reflect that he quit his employment or, alternatively, that he was dismissed but without any allegations of misconduct. Mr. Adams does not seek a change in the calculation of his benefits.

[5] In these circumstances, it is not apparent to us that the relief sought by Mr. Adams has any practical impact in relation to employment insurance. Nevertheless, we shall consider his application on its merits.

[6] In his memorandum of fact and law, Mr. Adams challenges the finding of misconduct, contending that the Umpire ignored certain evidence, failed to give proper weight to certain evidence, gave inordinate weight to hearsay evidence, and applied the incorrect standard of proof.

[7] We are to review the Umpire's decision on the basis of the deferential standard of review of reasonableness – that is to say, whether the Umpire reached a decision that was within the range of acceptability and defensibility on the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9,

[2008] 1 S.C.R. 190. In our view, the Umpire reached a reasonable decision, supportable on the facts and the law. His conclusions were based on evidence and accepted legal principles.

[8] In oral submissions, counsel for Mr. Adams submitted in essence that the evidence should have been weighed differently and that the basis for not accepting Mr. Adams' testimony should have been set out clearly. In applying the reasonableness standard, it is not for this Court to reweigh the evidence. Further, we find the Umpire's reasons, read in light of the reasons of the Board, to be sufficiently transparent and, thus, adequate under reasonableness review.

[9] Therefore, the application for judicial review shall be dismissed. The respondent did not seek costs and so none shall be awarded.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-352-12

**APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF UMPIRE J.M.
BORDELEAU IN CUB 77603A DATED MAY 31, 2012**

STYLE OF CAUSE:

Graham C. Adams Jr. v. Attorney
General of Canada

PLACE OF HEARING:

Halifax, Nova Scotia

DATE OF HEARING:

June 24, 2013

REASONS FOR JUDGMENT OF THE COURT BY:

Sharlow, Dawson, Stratas JJ.A.

DELIVERED FROM THE BENCH BY:

Stratas J.A.

APPEARANCES:

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FOR THE APPLICANT

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