

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

JORGE TORRES,

Plaintiff,

vs.

DEPARTMENT OF LABOR OF THE
GOVERNMENT OF THE VIRGIN ISLANDS,

Defendant.

CIVIL NO. 753/1988

ACTION FOR WRIT OF REVIEW

ALICIA SUAREZ, ESQUIRE
#60 Queen Street,
Frederiksted, St. Croix
U.S. Virgin Islands 00841
(809) 772-9475
(Attorney for Plaintiff)

ROSALIE SIMMONDS BALLENTINE, ESQUIRE
Department of Justice
#46 Norre Gade, St. Thomas
U.S. Virgin Islands 00801
(809) 775-5666
(Attorney for Government)

PETERSEN, Judge

MEMORANDUM OPINION AND ORDER

March 10, 1989

This matter is before this Court pursuant to 24 V.I.C. §§76, 77 on Petitioner's Motion for a Writ of Review in the Matter of Jorge Torres v. Meridian Engineering V.I. Dept. of Lab. Case No. 130-87 (July 7, 1988). For the reasons herein stated, Petitioner's Motion for a Writ of Review will be granted and Petitioner's prayer for relief will be denied.

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 2

FACTS

On or about June 23, 1987, petitioner Jorge Torres was discharged from his employment by his employer Meridian Engineering for allegedly stealing a car battery. Petitioner denied the accusation and on June 24, 1988 filed a wrongful discharge complaint with the Department of Labor. On May 16, 1988 the Department held a hearing which ultimately resulted in the dismissal of Petitioner's complaint.

On July 7, 1988, the Commissioner of Labor issued an Order replacing a previous order dated June 23, 1988, which stated, "[I]n cases where §76 (a)(8) appears to be the motivation for discharge, the termination will be upheld where it is found that the Respondent had a reasonable belief that the Complainant was dishonest..." In re Torres V.I. Dept. Lab. Case No. 130-87 (July 7, 1988). Petitioner, displeased with the Commissioner's ruling, filed a Writ of Review with this Court claiming that the Commissioner had exceeded his statutory authority and, as a result, his interpretation and application of the law was erroneous.

DISCUSSION

Two issues are presented for review as a result of Petitioner's writ. First, whether this Court has jurisdiction to review a decision entered by the Commissioner of Labor and secondly, whether the ruling of the Commissioner is inconsistent

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 3

with his statutory mandate thereby granting this Court authority to reverse his decision.

I.

Respondent claims that this Court has no jurisdiction over this cause of action since authority for the issuance of Writs of Review is granted to the District Court pursuant to 4 V.I.C. §34 and there are no provisions in the Virgin Islands Code granting the Territorial Court authority to entertain Writs of Review. This very assertion was addressed by Judge Feuerzeig in In re Hodge 16 V.I. 548 (Terr. Ct. St. T. and St. J. 1979). There, the Court stated:

[T]he provisions governing Writs of Review 5 V.I.C. §1421 et. seq. are part of Title 5, subtitle 1, Civil Procedure. The Court can find nothing in either subtitle 1 or the rules adopted by the District Court that purports to limit jurisdiction to issue Writs of Review to the District Court...The Court, therefore concludes that it has jurisdiction to issue Writs of Review pursuant to 5 V.I.C. §1421 et. seq.

Accordingly, this Court adopts the position espoused by Judge Feuerzeig that 5 V.I.C §1421 grants power to the Territorial Court to review decisions of administrative agencies. It must be noted, however, that a party seeking review must adhere to certain guidelines established by 5 V.I.C. App. V, Rule 11 which states:

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 4

(a) A Writ of Review may be allowed by the Court upon the petition of any person aggrieved by the decision or determination of an Officer, Board, Commission, Authority or Tribunal. Such petition shall be filed within 30 days after the date of the decision or determination.... The Petition shall be signed by the petitioner or by his attorney and shall be accompanied by the certificate of the attorney that he has examined the process or proceeding...

In Simmon v. Christian, 12 V.I. 307 (D.C.V.I. 1975) where Petitioner's complaint was filed later than the 30 days mandated by statute, and Petitioner's attorney did not file a certificate as required by the statute, the Court noted that substantial noncompliance with the terms of the statute will bar Petitioner from maintaining a proceeding pursuant to 5 V.I.C §1421.

Though there are similarities, Simmon can be distinguished from the present case. Although Petitioner's attorney did not file a certificate as mandated by the statute, he nevertheless signed the petition. The new Fed. R. Civ. P. 11 provides in part, "The signature of an attorney or party constitutes a certificate that the signer has read the pleadings, motion or other paper and to the best of the signer's knowledge it is well grounded in fact...". Therefore, under the New Rule 11, the signing of the petition by the Petitioner's attorney, would be sufficient to comply with the certificate requirement

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 5

of 5 V.I.C. App. V, R 11.

Respondent also asserts that Petitioner's Writ was not filed within the 30 day statutory period. At first blush, it would appear that Petitioner's Writ was not timely filed since the Commissioner's order was issued on July 7, 1988 and the Writ was not filed until August 25, 1988. However, the 30-day filing period begins to run not from the date the offending decision is rendered, but from the date of notice of the decision to the Petitioner. In re Hodge 16 V.I. 548 (citing Gordon v. King Civil No. 98/1977 (Dist. Ct. V.I. Div. St. T. and St. J., Jan. 31, 1978). Since Petitioner received notice of the Commissioner's order on August 6, 1988, his August 25, 1988 filing was within the 30-day statutory period and therefore timely.

Petitioner has complied with the filing requirements of 5 V.I.C App. V, Rule 11; thus this Court has jurisdiction pursuant to 5 V.I.C §1421.

II.

Petitioner also contends that the Commissioner of Labor's interpretation of 24 V.I.C. §76(a)(8) is inconsistent with the Commissioner's statutory mandate. Petitioner requests that this Court reverse the Commissioner's ruling upholding the termination on the ground that the Respondent had a reasonable belief that the Complainant was dishonest.

The authority granted to a court reviewing an admin-

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 6

istrative agency's decision is limited. The agency's interpretation of the statute with which it is charged with enforcing is entitled to substantial deference. EPA v. National Crushed Stones Ass'n, 449 U.S. 64 (1980). (citing Udall v. Tallman, 380 U.S.1 (1965), Vineland Chem Co. v. EPA, 810 F2d 402 (3d Cir. 1987)). Furthermore, the reviewing court cannot set aside the agency's interpretation of the statute unless there are compelling indications that the administrative construction of the statute is wrong. E.I. du Pont de Nemours and Co. v. Collins, 434 U.S. 46 (1977).

24 V.I.C. §76(a) enumerates grounds for which an employer can dismiss an employee. The specific section of this statute, which is the focus of this cause of action, §76(a)(8) states, "[U]nless modified by contract, an employer may dismiss any employee...who is dishonest." In interpreting this section of the statute, the commissioner stated, "[T]ermination will be upheld where it is found that the Respondent had a reasonable belief that the Complainant was dishonest." In re Torres, V.I. Dept. Lab. Case No. 130-87 (July 7, 1988).

In this jurisdiction, factual determinations of administrative agencies are judged by the substantial evidence standard; and the agency's finding will be upheld if the evidence on the record is sufficient to support such a finding. Herbert v. GESC, 21 V.I. 358 (D.C.V.I. 1985). Substantial

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 7

evidence is not a high degree of evidence and it has been defined as relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389 (1971).

In the present case, there was evidence that the vehicle from which the battery was stolen was driven into the Respondent's locked garage by the Petitioner. Once locked, no one can enter the garage except through the main office. After all other garage employees were dismissed, Complainant was asked to assist a customer in refueling his truck; this necessitated Complainant returning to and opening the garage. There was evidence presented that while in the garage, Complainant was seen with a car battery in his hand.

The Commissioner found that there was sufficient evidence to warrant a determination that the Respondent had a reasonable belief that the Complainant did steal the car battery.

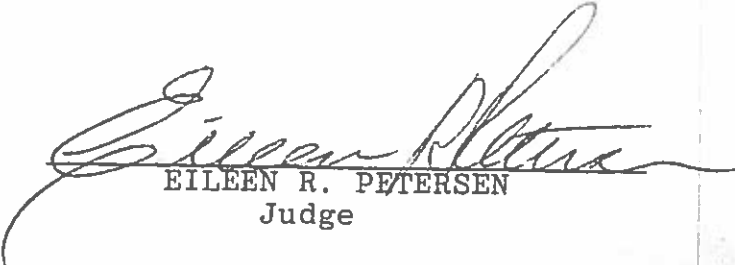
Although it appeared from the Commissioner's wording that the test employed to determine if Complainant was dishonest, was a "reasonable belief" test, in all actuality a determination of dishonesty was based on the totality of the evidence presented. The Commissioner's decision can best be characterized as one which found that the quantum of evidence presented was sufficient to warrant a finding of dishonesty.

JORGE TORRES v. GOVERNMENT ET AL
CIVIL NO. 753/1988
ACTION FOR WRIT OF REVIEW
PAGE 8

Furthermore, the burden is on the Complainant to prove by a preponderance of the evidence that the Commissioner's factual finding was incorrect. Belardo v. Bloch, 19 V.I. 97 (D.C.V.I. 1982). In the present case, Complainant did not meet that burden.

Bearing in mind that the evidence does not have to be conclusive but merely substantial, this Court cannot conclude that the quantum of evidence needed to support the agency's findings is lacking or led to an erroneous determination.

For the above stated reasons, the Petitioner's prayer for relief will be Denied.


EILEEN R. PETERSEN
Judge