

Docket: 2008-3884(EI)

BETWEEN:

JINGANG GUAN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on July 29, 2009, at Montreal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:        Laurent Brisebois

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**JUDGMENT**

The appeal from the determination of the Minister of National Revenue that the Appellant's employment with the University of Sussex from February 28, 2006 to February 28, 2007 was not insurable employment under the *Employment Insurance Act* is dismissed.

Signed at Ottawa, Canada, this 3rd day of November 2009.

“Réal Favreau”

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Favreau J.

Citation: 2009 TCC 561  
Date: 20091103  
Docket: 2008-3884(EI)

BETWEEN:

JINGANG GUAN,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

Favreau, J.

[1] The appellant appeals the determination of the Minister of National Revenue (the “Minister”) dated September 8, 2008, that his employment with the University of Sussex located in Brighton, East Sussex, in Great Britain, from February 28, 2006 to February 28, 2007 was not insurable employment under the *Employment Insurance Act*, S.C. 1996, c. 23 (the “Act”) and the *Employment Insurance Regulations*. The reason for the determination was that the employment of the appellant was outside Canada or partly outside Canada with an employer who did not reside in Canada or had no place of business in Canada.

[2] It has been established that, at all material times, the appellant was employed by the University of Sussex from September 16, 2004 to February 28, 2007 as a research fellow under the direction of Dr. Hazel Cox on a research project funded by the Engineering and Physical Sciences Research Council titled “Metal ion solvation in the gas phase: exploring higher oxidation states”. In a letter dated November 11, 2008, Dr. Cox explained in the following terms how this research project was conducted in collaboration with the University of Calgary and the role played by the appellant:

... key to this project was collaboration with the group of Prof. Tom Ziegler, University of Calgary, Canada, which involved the implementation of open-shell

time-dependent density functional theory. Jingang was responsible for working on the testing of this implementation in close collaboration with the Ziegler group and also spent three months in Canada to facilitate this work. This collaboration with the University of Calgary resulted in a joint (UK/Canada) research publication. Jingang continued to use the facilities at Calgary throughout the period spent at Sussex applying the code to multiply charged metal ligand complexes.

[3] In a letter dated January 23, 2008, the Human Resources Department of the University of Sussex confirmed that the appellant was employed by the University of Sussex from September 16, 2004 to February 28, 2007; that he worked full time at 37.5 hours per week; and that his salary was 31 211 pounds sterling per annum.

[4] During his employment with the University of Sussex, the appellant maintained his residency status in Canada and in Quebec and filed his tax returns with the Canada Revenue Agency (“CRA”) and Revenu Québec. No employment insurance premiums were paid by the appellant to the Canadian taxation authorities in 2006. The appellant also filed tax returns with the Inland Revenue of United Kingdom and paid national insurance premiums which included unemployment insurance.

[5] After termination of his employment with the University of Sussex, the appellant applied to the HM Revenue & Customs of the United Kingdom for a jobseekers allowance. The appellant’s application was denied because the jobseekers allowance cannot be paid outside of the United Kingdom. The U.K. authority sent to the appellant a copy of the Social Security agreement between the United Kingdom and Canada with a letter dated December 7, 2007 telling him that the jobseekers allowance in the U.K. is covered by this reciprocal agreement and encouraged him to apply for the employment insurance benefit in Canada.

[6] By letter dated July 14, 2009, CRA sought confirmation from various representatives of the University of Sussex, if it had a branch or a place of business in Canada for its foreign students, teachers or employees. On July 15, 2009, Sara E. Dyer of the International Student Support confirmed by e-mail that the University of Sussex has no branch or place of business in Canada.

### Analysis

[7] Insurable employment is defined in section 5 of the *Act*. By virtue of paragraph 5(1)(d), insurable employment includes “employment included by regulations made under subsection (4) or (5)”. Subsection 5(4) of the *Act* reads as follows:

**Regulations to include employment** — The Commission may, with the approval of the Governor in Council, make regulations for including in insurable employment

(a) employment outside Canada or partly outside Canada that would be insurable employment if it were in Canada;

...

[8] The regulations have been duly made and section 5 of the *Employment Insurance Regulations SOR/96-332* (the “*Regulations*”) reads as follows:

5. Employment outside Canada, other than employment on a ship described in section 4, is included in insurable employment if
  - (a) the person so employed ordinarily resides in Canada;
  - (b) that employment is outside Canada or partly outside Canada by an employer who is resident or has a place of business in Canada;
  - (c) the employment would be insurable employment if it were in Canada; and
  - (d) the employment is not insurable employment under the laws of the country in which it takes place.

[9] The expression “place of business in Canada” is not defined in the *Act* but a similar section in the *Canada Pension Plan Regulations C.R.C., c. 385* refers to an employer who has an establishment in Canada and the expression “establishment in Canada” is defined as follows in section 15 of the said *Regulations*:

“establishment in Canada”, with respect to an employer, means an office, warehouse, factory, oil well, gas well, mine, workshop, farm, timber land, pier, wharf, school, college, club, residence, hotel, motel, restaurant, tavern, bar or any other place or premises in Canada that is owned, leased or licensed by the employer and where the employer or one or more of his employees works or reports for work or from or at which one or more of his employees are paid:”

[10] The appellant testified at the hearing. The evidence disclosed that the appellant spent about three months in Canada while working for the University of Sussex. No information is available of the exact date on which the appellant reported to work at the University of Calgary. According to the appellant, the University of Calgary provided him with an ID card, an office, a computer and access to their laboratories

and to a software developed by the University of Calgary. No evidence was given by the appellant concerning the terms and conditions of the research collaboration between the University of Sussex and the University of Calgary nor information supporting the fact that the University of Sussex could be considered to have an establishment or a place of business at the University of Calgary. Mr. Alain Lacoste of CRA confirmed at the hearing that the University of Sussex had not filed any T-2 forms with the Canadian taxation authorities in respect of the 2006 and 2007 taxation years.

[11] Consequently, the appellant has not established on a balance of probabilities that the University of Sussex had a place of business in Canada during the terms of his employment.

[12] The Consolidated Arrangements on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada that was attached as a schedule to the letter dated 11 October, 1994 from the High Commission for the United Kingdom in Canada to the Minister of Employment and Immigration cannot be of assistance to the appellant because the unemployment benefit clause contained in paragraphs 7 and 8 of Part II is not applicable to the laws of Canada. The said paragraphs 7 and 8 read as follows:

- (7) For the purpose of any claim to receive unemployment benefit under the legislation of the United Kingdom, a person who has at any time before 6 April 1975 paid at least twenty-six weekly contributions as an employed person under the legislation of the United Kingdom, or in any year since 6 April 1975 has paid contributions as an employee earner on earnings of at least twenty-five times that year's weekly lower earnings limit, shall be treated, for the purpose of any such claim, as if:
  - (a) he had paid, under that legislation, an employed earner's contribution on earnings equivalent to two-thirds of that year's upper earnings limit, for each week during which he was gainfully occupied in employment in Canada;
  - (b) he had had a contribution credited to him under that legislation as an employed person for any week during which he was resident in Canada and was unemployed and available for work or was incapable of work, if that week was part of a period during which he was ordinarily gainfully occupied in employment in Canada.
- (8) Nothing in paragraph (7) shall diminish any right which a person has, apart from these arrangements, to receive unemployment benefit under the legislation of the United Kingdom.

[13] That unemployment benefit clause has no reciprocal effect in Canada and the mutual assistance clause contained in paragraph 7 of the said arrangements is not broad enough to confer rights to the appellant to obtain employment insurance benefit in Canada. The mutual assistance clause reads as follows:

- (17) the two parties shall assist one another on any matter relating to application of these arrangements as if the matter were one affecting the application of their own legislation.

[14] In conclusion, the appellant has not established on a balance of probabilities that he was employed by an employer who had a place of business in Canada. The employment with the University of Sussex was thus not insurable employment. The appeal is accordingly dismissed.

Signed at Ottawa, Canada, this 3rd day of November 2009.

“Réal Favreau”

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Favreau J.

CITATION: 2009 TCC 561

COURT FILE NO.: 2008-3884(EI)

STYLE OF CAUSE: Jingang Guan and M.N.R.

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: July 29, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: November 3, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Brisebois

COUNSEL OF RECORD:

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Firm:

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