

Docket: 2009-942(EI)

BETWEEN:

LUBNA ANWAR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on January 28, March 22 and July 8, 2010  
at Toronto, Ontario

Before: The Honourable N. Weisman, Deputy Judge

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Thang Trieu

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**JUDGMENT**

The appeal is dismissed and the decision of the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Toronto, Canada, this 14th day of July 2010.

"N. Weisman"  
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Weisman D.J.

Citation: 2010 TCC 377  
Date: July 14, 2010  
Docket: 2009-942(EI)

BETWEEN:

LUBNA ANWAR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

Weisman, D.J.

[1] The Respondent Minister of National Revenue (the “Minister”) has denied the Appellant Lubna Anwar (“Anwar”) unemployment benefits on unusual grounds. His investigators believe there was a fraudulent conspiracy between the Appellant, her husband Siraj Ghani (“Ghani”), and his employer A-1 Emission Centre Inc. (“A-1”), whereby A-1 agreed to put the Appellant’s name on many of her husband’s paycheques. This enabled him to claim that he earned only \$80.00 per week performing emission tests on trucks, which was just less than the maximum amount he was permitted while in receipt of parental leave benefits under the *Employment Insurance Act* (the “Act”)<sup>1</sup>. His wife, for her part, also claimed disability, maternity and parental leave benefits under the same *Act*, even though the Minister alleges that she had no working relationship with A-1.

[2] Since the Appellant bears the burden of proof in these matters, Anwar must establish that she was indeed employed by A-1 during the period under review, which is July 11, 2005 to April 15, 2006.

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<sup>1</sup> S.C.1996, c. 23 as amended.

[3] She claims that her duties at A-1 were threefold: she was responsible for telephoning automobile repair shops to persuade them to have their trucks tested by A-1's mobile unit, which was operated by her husband; if successful, she booked appointments for the tests and issued the resultant certificates and invoices; and finally, she purportedly did all the requisite data entries regarding the tests done by her husband.

[4] It is her contention that she was so successful in her sales endeavours that the number of emission tests referred to A-1 rose from approximately 30 per month when she began, to some 200 per month, for a total of 1,541 by the end of the period under review. In support of this, she filed a computer print-out of A-1's invoices for truck emission tests done during this period. When asked how such an internal business record came into her possession, she explained without hesitation that she was in charge of data entry for the company and naturally had access to all its records.

[5] She also filed five identical testimonial letters, which she admits she prepared, from various auto repair shops, all of which purport to corroborate that it was indeed her telephone calls that were instrumental in the signatories having the emission inspections on their trucks done by A-1.

[6] Unfortunately for the Appellant, all five gave *viva voce* evidence on behalf of the Minister. They all testified that while they either knew of, or had worked with the Appellant's husband Ghani, none knew the Appellant. Three of the five acknowledged signing the letter, not because they knew it to be true, but because either Ghani or one of their workers assured them that the female voice on the telephone at A-1 was that of the Appellant. One of the three said that a woman, who he believes was Ghani's wife, came to his office on two occasions to pick up cheques for A-1. A fourth denied ever signing the letter, but identified the signature as that of one of his workers who had access to the company stamp. The fifth witness testified that he outright refused to sign the document when it was presented to him by Ghani saying: "I can't sign it because it is not true". He was unable to recognize the signature on the letter that purported to be his. Ironically, he also pointed out that his company never did emission tests, or any other kind of work on trucks, in any event.

[7] A sixth witness for the Respondent Fazal Raja ("Raja") was the Manager of Five Star Auto & Truck Services ("Five Star") whose business premises were located just two doors away from those of A-1. Ghani worked for Five Star part-time inspecting truck emission controls for two years ending just before the period under review. The relationship ended, according to Raja, when Ghani requested that his

paycheques be put in his wife's name. When Raja told Ghani that he could not do that, Ghani resigned and "went next door" to A-1. Raja further maintained that during the nine month period under review, he was frequently at A-1's business premises and in its offices "many times" but never saw the Appellant there. Accordingly, when Ghani and his wife came to him some three or four months prior to this trial and requested written acknowledgment that Anwar did indeed work for A-1, he refused. He ended his testimony by addressing the following dramatic accusation to the Appellant: "You know very well that you were not there!"

[8] Ghani was permitted to earn \$84.25 per week while collecting parental benefits under the *Act*. He performed 1,541 tests over the relevant period, which means he was purportedly doing the necessary testing and issuing the requisite inspection certificates for approximately \$1.88 each. At the same time, A-1 was quoting the various repair shops \$75.00-\$80.00 per test. This tends to buttress the Respondent's allegation that a considerable part of Ghani's remuneration was being diverted to his wife.

[9] When Ghani testified in these proceedings, he said that Raja did not like him; that he withheld his first two months pay because he considered him an apprentice; and that he forced him to work past the last day of work recorded on his Record of Employment by threatening to withhold his back pay. Ghani also predicted that Raja would say that he was asked to put Ghani's paycheques in his wife's name, which Ghani denies.

[10] The Minister also relies on unexplained discrepancies in the Appellant's documentation. Some of her pay stubs, which she apparently prepared, were incorrectly dated, and reflect a level bi-weekly pay of \$947.17, whereas the cheques themselves vary in amount from \$950.00, to \$944.11, to \$947.17; the number of inspection certificates issued by Ghani in some months do not match either the numbers recorded in A-1's records or those on file with the Ministry of the Environment. Further, the amounts reported by the Appellant as "Employment Income" on her income tax returns do not match either those recorded by A-1, or those reflected in her pay stubs. If the Appellant was indeed in charge of data entry for A-1, one would expect the relevant entries and documentation concerning her husband and herself to be more accurate.

[11] When asked why she did not call the various key witnesses who could have corroborated her story, like her two employers at A-1, or its accountant who apparently recommended her for the position in the first place, the Appellant said: "Why would I? They say they are in collusion with us". In the same vein, one would

have thought that with over 1,540 successful quotes to a limited cohort of auto repair shops over a nine month period, she would have built up a relationship with some of them sufficient that they could be corroborative witnesses on her behalf. Her unlikely response was that she never told any of them her name.

[12] Credibility is very much in issue in these proceedings. Some seven months elapsed between the first day of this trial, when the importance of the missing witnesses should have become apparent to the Appellant, and the ultimate trial date. She had ample opportunity to call anyone who knew she worked at A-1 during the period under review, but failed to do so. Failure of key witnesses to testify without explanation allows the court to draw the adverse inference that their testimony would not have been helpful to the Appellant's case.<sup>2</sup> I draw this adverse inference. Moreover, if there were corroborative witnesses, there would be no need for her to produce questionable testimonial letters that cast doubt upon her credibility, including one that was forged by persons unknown. Further damage was done to the Appellant's cause by the credible testimony of Ghani's prior employer Raja that the working relationship ended when he refused to put the Appellant's name on Ghani's pay cheques.

[13] In this matter, the Appellant contributed to her own misfortune: she could have benefited from legal representation; her cross-examination of the Minister's witness, the obstreperous Major Fraud Officer Henry Dutkowsky, was redundant and ineffectual; the testimonial letters she submitted to support her position had the opposite effect; and, as aforesaid, she failed to call key witnesses on her behalf.

[14] I have investigated all the facts with the parties and the witnesses called on their behalf to testify under oath for the first time, and although I found new facts, such as the forged testimonial letter, they were not helpful to the Appellant. I also found nothing to indicate that the facts inferred or relied upon by the Minister were unreal, or were incorrectly assessed or understood.

[15] The Appellant has accordingly failed to discharge the onus of demolishing the assumptions set out in paragraphs 7 and 8 of the Minister's Reply to her Notice of Appeal. The Minister's determinations that there was no contract of service between the Appellant and A-1 during the period under review, and that they were not dealing with each other at arm's length in any event, are accordingly objectively reasonable.

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<sup>2</sup> *Levesque v. Comeau et al.*, [1970] S.C.R. 1010.

[16] In the result the appeal will be dismissed and the decision of the Minister confirmed.

Signed at Toronto, Canada, this 14th day of July 2010.

"N. Weisman"

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Weisman D.J.

CITATION: 2010 TCC 377

COURT FILE NO.: 2009-942(EI)

STYLE OF CAUSE: Lubna Anwar and The Minister of National Revenue

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APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Thang Trieu

COUNSEL OF RECORD:

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