Docket: 2005-1158(EI)

BETWEEN:

CHRISTINA JACKSON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard together on common evidence with the appeal of
Christina Jackson 2005-1403(EI)
on November 3, 2006 at Kelowna, British Columbia

Before: The Honourable Justice D.W. Beaubier

Appearances:

Counsel for the Appellant:	David Ertl
Counsel for the Respondent:	Selena Sit

JUDGMENT

The appeal is allowed and the decision of the Minister is vacated in accordance with the attached Reasons for Judgment. The Appellant is awarded one-half of the costs or disbursements to which she is entitled pursuant to the *Employment Insurance Act*.

Signed at OTTAWA, Canada, this 14th day of November, 2006.

"D.W. Beaubier"

Beaubier, J.

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Signed at OTTAWA, Canada, this 14th day of November, 2006.

"D.W. Beaubier"

Beaubier, J.

Citation: 2006TCC614
Date: 20061114
Docket: 2005-1158(EI)

BETWEEN:

CHRISTINA JACKSON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Docket: 2005-1403(EI)

AND BETWEEN:

CHRISTINA JACKSON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Beaubier, J.

[1] These appeals were heard together on common evidence at Kelowna, British Columbia on November 3, 2006. The Appellant and her husband, Dr. Craig Jackson, testified for the Appellant. The Respondent's counsel called Ken Wong, the appeals officer on the files. Docket no. 2005-1158(EI) is an appeal of a contrary ruling respecting the employment of the Appellant by the 50%-50% medical Partnership of Dr. Dennis Waechter and Dr. Craig Jackson Management ("Mgt") for the period August 31, 2003 to August 31, 2004. Docket no. 2005-1430(EI) is an appeal of a contrary ruling respecting the employment of the Appellant by Dr. Craig Jackson's wholly owned Corporation, Dr. C.S. Jackson MD Inc. ("MD Inc.") for the same period. During the same period, the Appellant

was also employed part time (for half of the school week) by a Vernon high school as a teacher of mathematics and sciences.

[2] Paragraphs 2 to 8 inclusive of the Reply to the Notice of Appeal 2005-1158(EI) read:

> 2. With respect to the whole of the Notice of Appeal he denies the following allegations of fact:
>
> a) the Appellant's employment contract was exactly the same as the previous office manager of the Partnership and the Corporation;
>
> b) the Appellant's employment, working hours, and wages were all exactly similar to that which would be offered to a replacement employee in the event that the Appellant stopped working for the Partnership and the Corporation;
>
> c) the Appellant is dealing at arm's length with the Partnership.
>
> 3. He has no knowledge of the remaining relevant allegations of fact stated in the Notice of Appeal.
>
> 4. On October 6, 2004 the Minister of National Revenue (the "Minister) issued a ruling determining that the Appellant was not employed in insurable employment with the Partnership as she was not dealing with the Partnership at arm's length during the period from August 31, 2003 to August 31, 2004 (the "Period").
>
> 5. By letter dated October 7, 2004 the Appellant appealed the ruling pursuant to section 91 of the *Employment Insurance Act*, S.C. 1996 c. 23 (the *"Act"*).
>
> 6. By letter dated March 2nd, 2005 the Minister determined that the Appellant was not employed by the Partnership in insurable employment during the Period and found that the Appellant was not dealing with the Partnership at arm's length pursuant to paragraph 5(2)(i) of the *Act*.
>
> 7. In determining that the Appellant was not employed in insurable employment with the Partnership during the Period, the Minister relied on the following assumptions of fact:

a) during the Period the Appellant worked for the Partnership and for the Corporation;

b) the Appellant worked for the Partnership and the Corporation since 1998;

c) the Partnership, also known as Waechter Jackson Management is between Dr. Dennis Waechter and Dr. Craig Jackson;

d) the Partnership operated a family medical practice;

e) the Appellant is married to Craig Jackson;

f) the Appellant is a certified general accountant;

g) during the Period the Appellant was the office manager/ comptroller of the Partnership and the Corporation;

h) during the Period the Appellant's duties for both the Partnership and the Corporation included daily billings, supervision of office staff, ordering of supplies, bookkeeping, payroll, all financial reporting and budgeting;

i) the Appellant alleges that during the Period she worked 7.5 hours per day on Thursdays and Fridays for the Partnership and 7.5 hours per day Tuesdays and Wednesdays for the Corporation;

j) during the Period the Appellant's hours worked at the Partnership and the Corporation were not recorded;

k) during the Period the Appellant also worked 2.5 days per week as a part time as a (*sic*) teacher for the Vernon School District;

l) during the Period the Appellant's rate of pay in respect of her employment with both the Partnership and the Corporation was $14.50 per hour.

m) during the Period the Appellant actually received $1,000.00 bi-weekly from the Partnership and $3,000.00 per month from the Corporation for a total of $5,000.00 per month;

n) during the Period the Appellant was provided coverage for dental, life and disability benefits under the Partnership's plan;

o) the previous office manger (*sic*) of the Partnership and the Corporation was, Valerie Burnett ("Valerie");

p) Valerie was issued a T4 from the Partnership but was not issued a T4 from the Corporation;

q) the Partnership did not pay the Appellant a substantially similar wage as that paid to Valerie;

r) the Appellant went on maternity leave on August 31, 2004; and

s) having regard to all the circumstances of the employment including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Partnership would have entered into a substantially similar employment contract if they had been dealing with each other at arm's length.

B. ISSUES TO BE DECIDED

8. The issue is whether the Appellant was employed in insurable employment with the Partnership during the Period.

Respecting the assumptions in paragraph 7, all except assumptions in subparagraphs (l), (o) and (s) are correct. Respecting (l), (o) and (s):

(l) – During the period, the Appellant's pay by Mgt was $2,000 per month. While she allegedly worked 7.5 hours on Thursdays and Fridays, in fact her hours were discretionary to her and occurred Tuesday through Saturday, usually in the late afternoons into the evening, sometimes commencing at about 3:00 p.m. and continuing until about 6:00 or 7:00 p.m.

(o) – The previous manager of the Partnership was Jill Powell ("Jill") who quit suddenly on two weeks notice. Valerie Burnett preceded Jill and was dismissed for cause. The Appellant had more duties than both her predecessors because the predecessors did not do the billing, payroll or financial reporting and budgeting, which the Appellant did; when her

predecessors managed Mgt, the Appellant did these latter tasks, but the manager did the other tasks described in subparagraph (h).

(s) – will be dealt with at a later point herein.

[3] Paragraphs 1 to 9 inclusive of the Reply to the Notice of Appeal 2005-1430(EI) read:

> **A. STATEMENT OF FACTS**
>
> 1. With respect to the whole of the Notice of Appeal he admits the following allegations of fact:
>
>   a) the Appellant worked as the comptroller/manager for Dr. C.S. Jackson MD Inc., (the "Corporation") and the partnership of Dr. Dennis Waechter and Dr. Craig Jackson Management (the "Partnership");
>
>   b) the Appellant has been an employee and has had Employment Insurance amounts deducted from her earnings for the duration of her employment with the Corporation and the Partnership.
>
> 2. With respect to the whole of the Notice of Appeal he denies the following allegations of fact:
>
>   a) the Appellant's employment contract was exactly the same as the previous office manager of the Corporation and the Partnership;
>
>   b) the Appellant's employment, working hours, and wages were all exactly similar to that which would be offered to a replacement employee in the event that the Appellant stopped working for the Corporation and the Partnership.
>
>   c) the Appellant is dealing at arm's length with the Partnership.
>
> 3. He has no knowledge of the remaining relevant allegations of facts stated in the Notice of Appeal.
>
> 4. On October 6, 2004 the Minister of National Revenue (the "Minister") issued a ruling determining that the Appellant was not employed in insurable employment with the Corporation as

she was not dealing with the Partnership at arm's length during the period from August 31, 2003 to August 31, 2004 (the "Period").

5. By letter dated October 7, 2004 the Appellant appealed the ruling pursuant to section 91 of the *Employment Insurance Act*, S.C. 1996 c. 23 (the "*Act*").

6. By letter dated March 2nd, 2005 the Minister determined that the Appellant was not employed by the Corporation in insurable employment during the Period and found that the Appellant was not dealing with the Corporation at arm's length pursuant to paragraph 5(2)(i) of the *Act*.

7. In determining that the Appellant was not employed in insurable employment with the Corporation during the Period, the Minister relied on the following assumptions of fact:

    a) during the Period the Appellant worked for the Corporation and the Partnership;

    b) the Appellant worked for the Corporation and the Partnership since 1998;

    c) the Corporation operated a family medical practice;

    d) the Appellant is married to Dr. Craig Jackson ("Dr. Jackson");

    e) Dr. Jackson owns 100% of the voting shares of the Corporation;

    f) the Appellant is a certified general accountant;

    g) during the Period the Appellant was the office manager/comptroller of the Corporation and the Partnership;

    h) during the Period the Appellant's duties for both the Corporation and the Partnership included daily billings, supervision of office staff, ordering of supplies, bookkeeping, payroll, all financial reporting and budgeting;

    i) the Appellant alleges that during the Period she worked 7.5 hours per day on Tuesdays and Wednesdays for the

Corporation and 7.5 hours per day on Thursdays and Fridays for the Partnership;

j) during the Period the Appellant's hours worked for the Corporation and the Partnership were not recorded;

k) during the Period the Appellant also worked 2.5 days per week as a part time as a (*sic*) teacher for the Vernon School District;

l) during the Period the Appellant's rate of pay in respect of her employment with both the Corporation and the Partnership was $14.50 per hour;

m) during the Period the Appellant actually received $1,000 bi-weekly from the Partnership and $3,000 per month from the Corporation for a total of $5,000 per month;

n) during the Period the Appellant was provided coverage for dental, life and disability benefits under the Partnership's plan;

o) the previous office manger (*sic*) of the Partnership and the Corporation was, Valerie Burnett ("Valerie");

p) Valerie was issued a T4 from the Partnership but was not issued a T4 from the Corporation;

q) the Corporation did not pay the Appellant a substantially similar wage as that paid to Valerie;

r) the Appellant went on maternity leave on August 31, 2004; and

s) having regard to all the circumstances of the employment including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is not reasonable to conclude that the Appellant and the Corporation would have entered into a substantially similar employment contract if they had been dealing with each other at arm's length.

B. ISSUES TO BE DECIDED

8. The issue is whether the Appellant was employed in insurable employment with the Corporation during the Period.

C. STATUTORY PROVISIONS RELIED ON

9. He relies on paragraphs 5(1)(a), 5(2)(i) and 5(3)(b), subsection 2(1) and on section 91 of the *Act*. He also relies on section 251 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) as amended.

[4] Assumptions 7(a), (b), (d), (e), (f), (g), (j), (k), (m), (n), (p) and (r) were either confirmed by the evidence or were not refuted. Respecting the remaining assumptions:

(c) – MD Inc. was Dr. Jackson's corporate person; it operated his interest in Mgt and his practice in two additional medical clinics in Vernon, British Columbia and also managed a condominium it owned in Whistler, British Columbia.

(h) – The Appellant's duties for MD Inc. included the records and billings, bookkeeping, financial, management and budget work for the two clinics' operations and all of the management, bookings and financial aspects of the condominium which MD Inc. rented as a vacation property to various customers in Whistler, British Columbia, about 400 kilometres from MD Inc.'s premises in Vernon.

(i) – Is the allegation, but the evidence, which is believed, is that the work was done from the Appellant's home office at various times including Tuesdays and Wednesdays for about 15 hours each week.

(l) and (m) – The Appellant's rate of pay was $3,000 per month which was based on a combination of hours worked and MD Inc.'s income earned.

(o) and (g) – No one except Dr. and Mrs. Jackson ever worked for MD Inc..

(s) – will be dealt with at a later point.

[5] A large volume of information was placed in evidence at the hearing which was not in evidence at the appeals level before the Minister of National Revenue. The Appellant taught two and one-half days per week; on Tuesdays until 11:15 a.m., on Thursdays until 2:30 p.m. and the remaining full day period divided between Wednesdays and Fridays. After teaching from Tuesday through Friday she usually went to Mgt's office where her hours were not fixed, but where she often worked for 2 to 3 hours after the office closed for patient appointments at 5:00 p.m. Tuesday through Friday. MD Inc.'s work was done during the day on Monday and during intermittent times including evenings on other days, averaging 15 hours per week. All medical billing work required the patient charts and about 75% of the billing was paid on a timely basis; the remaining 25% often required follow-ups and more detailed particulars from the files. Some of this was available from the offices' computers to the home office computer. (Valerie Burnett had also worked from home at times.) The Appellant provided monthly financial reporting to both employers; Valerie did not. Actual staff management for Mgt was done in the office premises. This required scheduling employees' hours and work days and actually managing the employees from time to time as distinct from managing their medical duties for the doctors. Neither previous manager of Mgt had done the financial billings, accounting et cetera that the Appellant did.

[6] The Appellant testified that, at $2,000 per month, she was under paid by Mgt considering that her management duties also included the financial work. The Appellant had 10 years previous accounting experience in a senior position in Vancouver so her accounting experience was extensive. The previous manager, Jill, of Mgt had done 3 days management work and 2 days medical assistance work, but no financial or accounting work.

[7] Respecting Mgt, to the Court –

Remuneration paid – Having regard to the Appellant's duties, the fact that the job was part time, and the fact that Dr. Waechter, who is not related to the Jacksons, had a 50% input into the hiring and employment transaction, this appears reasonable and what would be paid in a similar arm's length transaction.

The Court makes the same finding respecting the terms and conditions of employment, and the duration and the nature and importance of the work performed. Both the management and the accounting or financial duties were very important to the successful and profitable operation of the Partnership, and they required an experienced and mature employee, but the job was part time. There had been financial problems with Valerie which the Appellant corrected in part with

more extensive accounting including monthly financial statements which were reviewed by the Appellant with Mgt's partners and, respecting the Corporation, with Dr. Jackson. Moreover, the partners were only given two weeks notice when Jill quit in which to hire a suitable replacement. The Appellant had computerized the bookkeeping and the office under contract and knew the office's set up, which is part of the reason that Mgt hired her.

[8] As a result, the Appeal by the Appellant of Docket No. 2005-1158(EI) is allowed and the Appellant is awarded one-half of the costs or disbursements to which she is entitled pursuant to the *Employment Insurance Act*.

[9] Respecting MD Inc., to the Court –

Remuneration paid – Assumption 7(p) in Docket No. 2005-1403(EI) is wrong; Valerie was never employed by the Corporation and did not receive a wage from it. Thus, without any evidence of a comparable wage or set of employment duties, the question is whether $3,000 per month was a reasonable wage for the Appellant's part time job. She had to prepare and recover Dr. Jackson's billings from two clinics at which Dr. Jackson worked each week in the Vernon area; she managed all aspects of the Vernon condominium and she did all of the financial work for the Corporation. This required financial experience, medical experience, and a full range of property management experience and the skills for all of this. The job was part time and she was paid $36,000 per year. The only comparison the Court has in evidence is that concerning the Partnership for which she was paid $2,000 per year by the partners. The Appellant testified that MD Inc. required more time from her than did the Partnership. That is credible because MD Inc. did not have an office in either of the other two clinics' premises and renting and managing property is time consuming. The result is that, on balance, the Court finds that the remuneration paid was reasonable.

- The terms and conditions of the employment were also reasonable for a part time job with the complications and responsibilities this job had.

- Similarly, the duration and nature and importance of the work performed required someone who would work part time and in addition had strong accounting and medical billing skills and knowledge, who could carry on all aspects of property management and could prepare full financial statements. This is a rare combination of skills; it does not come cheap; and it is even rarer if it is available for part time work.

[10] The result is that it is reasonable to conclude that the Appellant and the Corporation would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length and the Court so finds.

[11] The Appellant's appeal of Docket No. 2005-1403(EI) is allowed and the Appellant is awarded one-half of the costs or disbursements to which she is entitled under the *Employment Insurance Act*.

Signed at OTTAWA, Canada this 14th day of November, 2006.

"D.W. Beaubier"

Beaubier, J.

CITATION:	2006TCC614
COURT FILE NO.:	2005-1158(EI) and 2005-1430(EI)
STYLE OF CAUSE:	Christina Jackson v. The Minister of National Revenue
PLACE OF HEARING:	Kelowna, British Columbia
DATE OF HEARING:	November 3, 2006
REASONS FOR JUDGMENT BY:	The Honourable Justice D.W. Beaubier
DATE OF JUDGMENT:	November 14, 2006

APPEARANCES:

Counsel for the Appellant:	David Ertl
Counsel for the Respondent:	Selena Sit

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