Docket: 2007-3761(IT)I

BETWEEN:

GARY ALLEN POTTER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 19, 2008, at Edmonton, Alberta.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Milena M. Jusza (Student-at-Law)

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation year is dismissed.

Signed at Ottawa, Canada, this 22nd day of April 2008.

"Patrick Boyle"

Boyle, J.

Citation: 2008TCC228
Date: 20080422
Docket: 2007-3761(IT)I

BETWEEN:

GARY ALLEN POTTER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on March 19, 2008, in Edmonton, Alberta and modified for clarity and accuracy.)

Boyle, J.

[1] Mr. Potter was an employee of an Edmonton-based employer but, in the years in question, was working on a Syncrude project in the Fort McMurray area, some 500 kilometres away.

[2] Mr. Potter lived in the Edmonton area and drove his own vehicle back and forth weekly to work in Fort McMurray. The question to be decided in this case is whether Mr. Potter is entitled to deduct the car expenses for this travel under paragraph 8(1)(*h.1*) of the *Income Tax Act*.

[3] The general rule is that travel to and from work, whether an employee or self-employed, is a personal expense that cannot be deducted for tax purposes. There are several specific exceptions for employees set out in the legislation including paragraph 8(1)(*h.1*).

[4] There are generally four requirements to be met in order to qualify for this particular deduction: (1) the employee must be required to work away from the employer's place of business or in different places; (2) the employee must be required under the terms of his employment to pay for employment-related car expenses; (3) the expenses must have been incurred for traveling in the course of his

employment; and (4) the employer must certify on a prescribed form that these conditions were met.

[5] The Crown concedes that the last requirement, that the Form T2200 be certified by Mr. Potter's employer, was satisfied so I need not return to it.

[6] The Crown also conceded that the first requirement was satisfied in this case. Given that concession, I can move on to the remaining two requirements. However, before doing so, I would like to say this concession surprised me somewhat. The evidence was that the employer was based in Edmonton. That is where its main office and plant were located. The employer also had a small office in Hinton. The employer had a crew of about 70 employees working, under subcontracts, at the Syncrude project each workday throughout the two years in question. How much longer than two years was not in evidence. The employer had arranged with Syncrude for dedicated office space throughout the period, a cubicle in an ATCO trailer, where the employer's superintendent worked. I had expected to hear argument on whether or not Mr. Potter's employer had a place of business in Fort McMurray since it is clear that is where Mr. Potter reported for work throughout. However, this first requirement is not in issue.

[7] Turning to the second requirement, there was no evidence that Mr. Potter was expressly or implicitly required by his employer to use his personal car or to have it available for employment purposes. The letter from Mr. Potter's employer that he put in evidence does not even address this question. The Form T2200 is not in evidence, though I know from experience that in such a form the employer certifies that this requirement was satisfied. Since no one from the employer testified and the employer's letter in evidence does not address it, I do not accept that the mere signing of the T2200 satisfies this requirement.

[8] There was bus transportation to and from Edmonton arranged by the employer for its employees at the Syncrude project. This arrangement for busing means that Mr. Potter's employment did not require him to use his own car to get there and back.

[9] Mr. Potter explained that he did not use the bus at all after his first day on the job. This was out of concern for his personal safety. He was a foreman at the time — he is now the superintendent — and did not feel comfortable traveling on the buses with his crews. There apparently have been nasty incidents in the sector, and Mr. Potter felt he had cause for concern in his own situation based on what employees were said to have said behind his back. Regardless of how well-founded Mr. Potter's security concerns were, the Federal Court of Appeal in its 2002 *Hogg v.*

The Queen (2002 DTC 7037) decision has ruled, in the case of judges no less, that concerns for personal safety related to the job are not relevant to the paragraph 8(1)(*h.1*) deduction.

[10] Having not been able to satisfy the second test, Mr. Potter cannot succeed since all four requirements must be met.

[11] However, I also find that Mr. Potter's circumstances do not meet the third requirement, that the travel was "in the course of" his employment. This Court's 2000 decision in *O'Neil v. The Queen* (2000 DTC 2409) was affirmed by the Federal Court of Appeal in *Hogg*. These cases make it clear that traveling in the course of employment necessarily involves the performance of some service as compared to simply getting oneself to the place of work. In this case, there is no evidence or suggestion that Mr. Potter took any crew or supplies with him to Fort McMurray for the benefit of his employer.

[12] Accordingly I am dismissing Mr. Potter's appeal.

Signed at Ottawa, Canada, this 22nd day of April 2008.

"Patrick Boyle"

Boyle, J.

CITATION:	2008TCC228
COURT FILE NO.:	2007-3761(IT)I
STYLE OF CAUSE:	GARY ALLEN POTTER AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	March 19, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Patrick Boyle
DATE OF JUDGMENT:	April 22, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Milena M. Jusza (Student-at-Law)

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