

Docket: 2009-242(IT)I

BETWEEN:

WALLACE B. BINGLEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 11, 2009, at Sydney, Nova Scotia

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Shannon Williams

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 19th day of January 2010.

“V.A. Miller”

V.A. Miller, J.

Citation: 2010TCC34
Date: 20100119
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WALLACE B. BINGLEY,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

[1] The Appellant has appealed the reassessment of his 2004 taxation year. The issue in this appeal is whether the Appellant is entitled to deduct motor vehicle travel expenses in accordance with paragraph 8(1)(h.1) of the *Income Tax Act* (the “Act”).

[2] When he filed his income tax return for 2004, the Appellant claimed motor vehicle expenses in the amount of \$1,351. In 2007, he requested that the claim for motor vehicle expenses be increased to \$7,154. The Minister of National Revenue (the “Minister”) did not agree to the Appellant’s request; and, the Appellant was reassessed to disallow the amount of \$1,351 that was claimed initially. At the hearing of this appeal, the Appellant stated that the amount of \$7,154 which he had claimed was incorrect. He submitted a list of the places where he worked in 2004 with the mileage that he drove. He was not able to quantify the motor vehicle expenses which he was now claiming.

[3] In 1998 the Appellant was hired, on a casual basis, as an engineer with the Canadian Coast Guard (“CCG”). He became an indeterminate (permanent) employee of the CCG in October 2005.

[4] As a casual employee, the Appellant received a “Letter of Offer of Casual Employment” for each period that he worked. He was stationed on only one ship during each period and it was necessary for the Appellant to travel from his home to the location where the ship was docked.

[5] Paragraph 8(1)(h.1) of the *Act* reads as follows:

8. (1) Deductions allowed -- In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

(h.1) **motor vehicle travel expenses** -- where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (f);

[6] In order to meet the requirements in paragraph 8(1)(h.1), an employee must (a) ordinarily be required to perform his duties away from his employer's place of business or in different places; (b) be required, under his contract of employment, to pay for his own motor vehicle expenses; and (c) have incurred the motor vehicle expenses while traveling in the course of his duties.

[7] In the present appeal, the Appellant entered into a new contract of employment for each period that he worked for the CCG. In each period, he was offered work in a particular place. As an example, he tendered a “Letter of Offer of Casual Employment” dated September 20, 2004 in which he was offered and accepted work as an “engineering officer” at Clarks Harbour for the period September 20, 2004 to September 27, 2004.

[8] Each time that the Appellant worked for CCG in 2004, he was hired to work on a ship in a particular place. Any travel that he did to reach the ship was not in the course of his duties, but was personal travel to go to work.

[9] The Appellant has not satisfied the requirements of paragraph 8(1)(h.1). The appeal is dismissed.

Signed at Ottawa, Canada, this 19th day of January 2010.

“V.A. Miller”

V.A. Miller, J.

CITATION: 2010TCC34

COURT FILE NO.: 2009-242(IT)I

STYLE OF CAUSE: WALLACE B. BINGLEY AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Sydney, Nova Scotia

DATE OF HEARING: December 11, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: January 19, 2010

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Shannon Williams

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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Ottawa, Canada