

Docket: 2011-1731(EI)

BETWEEN:

GALINA MILOVA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 2, 2012, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

|                             |                       |
|-----------------------------|-----------------------|
| For the Appellant           | The Appellant herself |
| Counsel for the Respondent: | Stephen Oakey         |

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**JUDGMENT**

The appeal made by the Appellant under the *Employment Insurance Act*, S.C. 1996, c. 23 for the period November 5, 2008 to November 5, 2010 is dismissed and the decision rendered by the Minister of National Revenue on May 12, 2011 is confirmed.

Each party is to bear to their own costs.

Signed at Ottawa, Canada, this 9th day of March 2012.

“Robert J. Hogan”

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Hogan J.

Citation: 2012 TCC 76  
Date: 20120309  
Docket: 2011-1731(EI)

BETWEEN:

GALINA MILOVA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Hogan J.

[1] This is an appeal of a decision by the Minister of National Revenue (the “Minister”) dated May 12, 2011 that the Appellant’s employment with 4240022 Canada Inc. (the “Payer”) for the period November 5, 2008 to November 5, 2010 was excluded from insurable employment.

[2] In determining that the Appellant was not engaged in insurable employment, the Minister relied on the following assumptions of fact:

#### **The Payer**

- (a) the Payer was incorporated on January 10, 2005;
- (b) the Payer’s business activity was new material research and development;
- (c) the nature of the Payer’s business operation was:
  - (i) public and government relations;
  - (ii) research pertaining to optical devices;
  - (iii) security in science and technology;
  - (iv) sensitive motion networks;
  - (v) protection of intellectual property;

- (vi) marketing; and
- (vii) financial and legal services;
- (d) the Appellant was the sole shareholder of the Payer;
- (e) the Appellant controlled 100% of the voting shares of the Payer;
- (f) the Appellant controlled the day-to-day operations and made the major business decisions for the Payer;
- (g) the Payer filed corporate tax returns for the 2005 to 2009 taxation years with corporate income being reported as “nil”;

### **The Appellant**

- (h) the Appellant was the sole director of the Payer;
- (i) the Appellant was the president of the Payer;
- (j) the Appellant had sole signing authority on the Payer’s bank account;
- (k) the Appellant’s duties included:
  - (i) performed banking;
  - (ii) performed communication functions, which included searching, consulting, networking, participating in meetings and seminars;
  - (iii) prepared reports, proposals and agreements; and
  - (iv) formulated projects and did marketing;
- (l) the Payer provided the Appellant with a computer, fax machine, desk, and chair necessary for her to perform her duties.
- (m) the Payer did not charge the Appellant for the use of the above tools and equipment listed in the above subparagraph 18(1);
- (n) the Appellant performed her duties at the Payer’s office, which was also her personal residence located at 1212-3000 Dufferin St., North York, Ontario;
- (o) the Appellant performed her duties seven days a week, between the hours of 6:00 a.m. and 10:00 p.m.;
- (p) the Appellant’s hours of work were not recorded;
- (q) the Appellant was not paid for any work she completed for the Payer for the Period;
- (r) the Appellant did not receive any bonuses, vacation pay or paid vacation leave;
- (s) the Appellant reported income of \$0.00 on her personal income tax returns for the 2009 and 2010 taxation years;
- (t) the Payer did not issue any T4 slips or T4A slips to the Appellant for the Period;
- (u) the Payer was responsible for the costs to repair and maintain the computer, fax machine, desk and chair (if any); and
- (v) the Payer paid for the Appellant’s telephone, fax and transportation expenses.

[3] The Minister determined that the Appellant’s employment was excluded under paragraph 5(2)(b) of the *Employment Insurance Act* because the Appellant controlled more than 40% of the voting shares of the Payer. Paragraph 5(2)(b)

provides that employment is not insurable when the employee holds more than 40% of the voting shares of a company and the employee can exercise these voting rights. The Appellant admits that she held 100% of the voting shares of the Payer in the period under review.

[4] Therefore it is clear that the Appellant's employment with the Payer for the period of November 5, 2008 to November 5, 2010 was excluded from insurable employment.

[5] The Appellant's appeal is dismissed for this reason. Each party is to bear their own costs.

Signed at Ottawa, Canada, this 9th day of March 2012.

“Robert J. Hogan”

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Hogan J.

CITATION: 2012 TCC 76

COURT FILE NO.: 2011-1731(EI)

STYLE OF CAUSE: GALINA MILOVA v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 2nd, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: March 9th, 2012

APPEARANCES:

|                             |                       |
|-----------------------------|-----------------------|
| For the appellant:          | The Appellant herself |
| Counsel for the respondent: | Stephen Oakey         |

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
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