Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-427

JUNE TERM, 2006

Samantha Britt	}	APPEALED FROM:
	}	
	}	
v.	}	Employment Security Board
	}	
Department of Labor	}	
	}	DOCKET NO. 01-05-137-11 ATTA

In the above-entitled cause, the Clerk will enter:

Appellant Samantha Britt appeals pro se from a decision of the Employment Security Board affirming an administrative law judge=s ruling that Britt was ineligible to participate in a federal assistance program for displaced workers. We reverse.

Britt was employed by a company known as REHAU in Springfield, Vermont, when the company relocated its Springfield operation to Winnipeg, Canada. As a result, Britt became eligible to apply for benefits under the

federal Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933. A provision of the Act established a Trade Adjustment Assistance (TAA) program to provide a wage subsidy for older workers displaced from their employment due to competition from abroad, relocation of the worker=s employer abroad, or the outsourcing of labor. Id. ' 246, 116 Stat. 944 (codified at 19 U.S.C. ' 2318). The federal Department of Labor administers the program through cooperating state agencies, designated in Vermont as the Department of Employment and Training (which has since been merged into the Vermont Department of Labor), in accordance with federal law and regulations.

Under the program, eligible workers who obtain new, full-time employment may receive up to half of the difference between the worker=s old and new wages, up to a maximum subsidy of $10,000 during a two-year period. The Act establishes five eligibility criteria for TAA benefits, one of which requires that the worker obtain new employment Aon a full-time basis as defined by State law in the State in which the worker is employed.@ 19 U.S.C. ' 2318(a)(3)(B)(v). Although the Act does not further define full-time employment, a ATraining and Employment Guidance Letter@ issued by the federal Department of Labor provides: AThe verification [of full-time employment] will be conducted in the same manner as is used for determining UI [unemployment insurance] benefits.@ The unemployment insurance division of the Vermont Department of Labor defines full-time employment as 35 hours or more per week.

Britt testified, and the administrative law judge (ALJ) found, that after she lost her job with REHAU, Britt learned of a job with the Rutland Herald for thirty hours per week. Britt was also aware that she needed to be employed full-time to qualify for TAA benefits. Accordingly, Britt contacted the customer service representative at the career resource center (CRC) in Rutland who was assisting her in applying for TAA benefits, and inquired whether 30 hours per week was considered full-time employment. Britt testified, and the ALJ found, that the customer service representative in Rutland was Acertain that full-time employment was defined as 30 hours per week.@ Britt testified further that the service worker in Rutland called her counterpart in Springfield while Britt was present, and was assured that 30 hours per week was considered full-time. Indeed, the Board specifically found that Britt Amade a diligent attempt to ascertain whether accepting a 30 hour a week position would qualify her for ATAA benefits@ and Awas told by two different employees of the department that she would

indeed qualify.@ The Board further found that, in accepting employment at 30 hours per week with the Rutland Herald, Britt Arelied on that advice to her detriment.@

Despite the earlier advice from the Department=s customer service representatives, when Britt applied for TAA benefits she was informed by the TAA coordinator for the Vermont Department of Labor that she was ineligible because she was not employed full-time at 35 hours per week as defined by the State unemployment-insurance division. The ALJ upheld the Department=s decision, observing that while Britt=s inquiries were Acommendable@ and the customer service representative=s error was Aregrettable,@ Britt Acould have insisted that the customer service representative check with her supervisor, the TAA coordinator in Montpelier, or Ms. Britt could have called the TAA supervisor herself for clarification.@ Because the federal and state regulations were clear that full-time employment consists of 35 hours or more per week, the ALJ ruled that Britt was ineligible for TAA benefits.

The Board affirmed. While echoing the ALJ=s observation that the misrepresentation was Aregrettable@ and suggesting that the Department Abetter train its staff in the administration of the TAA/NAFTA program,@ the Board declined to waive or modify the requirement. This appeal followed.

Although the issue is not fully articulated in her brief, Britt essentially relies on the principle of equitable estoppel. We recently explained the doctrine as follows:

> The doctrine of equitable estoppel precludes a party from asserting rights which otherwise might have existed as against another party who has in good faith changed his position in reliance upon earlier representations. [T]he doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon. We have further recognized that although estoppel is not a defense that should be readily available against the state, . . . neither is it a defense that should never be available. Thus,

> [w]hile the doctrine of estoppel must be applied with great caution when the government is the involved party, nevertheless when a government agent acts within his authority, the government can be estopped by his actions.

In re Lyon, 2005 VT 63, & 16, 178 Vt. 232 (internal quotations and citations omitted).

A party seeking equitable estoppel against the government must establish its four traditional elements:

> (1) the party to be estopped must know the facts; (2) the party being estopped must intend that his conduct shall be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment.

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Id. & 17. Additionally, Athe party seeking to estop the government must demonstrate that the injustice that would ensue from a failure to find an estoppel . . . outweighs any effect upon the public interest or policy that would result from estopping the government.@ Id. (quotations omitted).

We conclude that Britt adequately established the elements of estoppel and demonstrated the justice of its application here. The Department and its agents were not only aware of the eligibility requirements for TAA benefits, but had the affirmative duty under federal and state regulations to accurately disseminate that information. The federal Training and Employment Guidance letter to cooperating state agencies directs that A[i]t is essential that timely and accurate information about the Trade Act program be provided to affected workers to facilitate more informed decision-making and to expedite their return to employment.@ A Vermont Department of Employment and Training Directive similarly provides that Aadversely affected workers need to be fully informed of the benefits and services available under the TAA and ATAA programs.@ Indeed, to promote this goal the Directive provides that workers should fully Aavail themselves of assistance from the local office counselors.@ See Stevens v. Dep=t of Social Welfare, 159 Vt. 408, 420-21 (1992) (holding that State was estopped from denying Medicaid benefits where Department of Social Welfare representative provided inaccurate

information to applicant in violation of Aaffirmative obligation@ to fully inform applicant of her rights and obligations).

Thus, it was duty of the local CRC customer service representatives with whom Britt consultedC not the state coordinator as the ALJ impliedC to provide accurate information to Britt, and it is of no moment that they themselves were ignorant of the actual requirement of 35 hours per week for full-time employment. See In re Lyon, 2005 VT 63, & 19 (holding that Water Resources Board erred in rejecting estoppel claim based on official=s ignorance of applicable law because Ahe was reasonably charged with knowing the laws governing his duties@).

Britt also established the remaining elements of estoppel. The record shows that she spoke with the customer service representative for the express purpose of determining whether she would be eligible for TAA benefits if she accepted an offer to work for 30 hours per week, and the representative was aware of this when she erroneously stated that Britt would be eligible for benefits. There is also no question from the record that Britt was ignorant of the true facts, and that she relied on the misinformation to her detriment in accepting the 30-hour position, as the Board specifically found.

Having met the requirements of estoppel, Britt has also demonstrated that the interest in fairness outweighs any detrimental effect to the public interest. Both the ALJ and the Board found Britt=s diligence in attempting to inform herself of the definition of full-time employment to maintain her eligibility for TAA benefits to be Acommendable,@ and the government readily acknowledges that it provided her erroneous information on which she relied to her financial detriment. The State articulates no countervailing threat to the public interest in estopping it from denying her claim for TAA benefits on the basis of the full-time employment requirement. Accordingly, we conclude that the Board=s decision sustaining the ALJ=s denial of TAA benefits must be reversed.

Reversed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice