



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. H. v Canada Employment Insurance Commission*, 2019 SST 1639

Tribunal File Number: GE-19-3866

BETWEEN:

T. H.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: December 12, 2019

DATE OF DECISION: December 20, 2019

DECISION

[1] The appeal is allowed. The Claimant was not employed. This means she is not disqualified from receiving employment insurance (EI) benefits.

OVERVIEW

[2] While receiving EI benefits the Claimant applied for what she believed would be a full-time job with an international retailer. She attended an orientation session and discovered the job was part-time. She advised the employer that she could not take the job at the part-time hours. The Commission decided that the Claimant was employed by the retailer and that she voluntarily left her employment. It disqualified her from receiving EI benefits from the date of the orientation session, and asked her to repay the benefits she had received since that date. The Claimant disagrees with the Commission because she says she did not know she was hired, or that she would be paid for the time spent in the orientation. Rather, she refused the job because the hours of work she was offered were not enough to support her and her family.

ISSUES

[3] I have to decide if the Claimant was employed. If I decide the Claimant was employed, I then have to decide if, under the *Employment Insurance Act*, she had just cause to leave her job. This second decision takes two steps. First, I have to see if she chose to leave her job. Second, I have to see if she had just cause for leaving.

ANALYSIS

The Claimant was not employed

[4] The law says that if you quit your job without just cause, you cannot receive EI benefits.¹

[5] The Commission is required to prove that the Claimant voluntarily left her employment.² Underlying this requirement is the need to prove the Claimant was actually employed.

¹ *Employment Insurance Act*, section 30(1). This is how I refer to the legislation that applies to this appeal.

² *Canada (Attorney General) v White*, 2011 FCA 190. This is how I refer to court cases containing principles that I am required to apply to the circumstances of this appeal.

[6] The Commission concluded the Claimant was employed because she attended an orientation session with a retailer and received wages for attending the session. The retailer also issued a Record of Employment (ROE) showing the Claimant worked for 13 hours, the wages she received and the vacation pay paid on those wages.

[7] The Claimant testified that a friend, who worked with the retailer, told her there was a full-time job available and suggested she apply for the job. The Claimant went to the retailer's web-site to look at the job. There were a number of jobs advertised, so she called her friend to make sure she was applying for the full-time job. The job she applied for was permanent cashier. The Claimant believed that she would have full-time hours because the job was permanent.

[8] The Claimant explained that she attended a group interview for the position. The interview was conducted by a recruiter who was not employed by the retailer. She and two other people were interviewed at the same time, herself and another person had applied for the same position. There was no discussion or information about the hours of work or the salary for the position she had applied for. The interview consisted of information about the retailer and the retailer's rules. The Claimant said she next got an email from the recruiter stating "you have an invitation to an orientation" and asking her to choose from one of three or four time slots to attend. There was no information about the hours or wages for the position that she applied for in this email. The Claimant thought the orientation was a second interview.

[9] The orientation session was held in June 2019. The Claimant said that she attended the orientation session in the evening. The session was scheduled for four hours and run by the retailer's personnel manager R. P.. About two hours into the session the number of hours for the position came up. R. P. said it would be 12 hours a week. Other people in the room, who applied for casual jobs, said they had applied for 12 hours a week. R. P. told the Commission that the Claimant spoke up and said "oh it's not full time." The Claimant said to R. P. that she had applied for full-time not 12 hours a week. R. P. told the Commission that he then showed the Claimant her on-line application and the job that she had applied for was part-time work. She told R. P. and the Commission that she could not support herself and her family on 12 hours a week. R. P. said to the Claimant, "that is all I can guarantee you."

[10] The Claimant testified that R. P. asked her to attend a computerized training session the next day and in the meantime he would see if he could get her additional hours in other departments. The Claimant attended the computerized training the next day. She said that R. P. told her that no other departments were offering full-time hours at that time. She understood that if she worked she would not receive EI benefits. She decided that because she was barely getting by on EI benefits that she could not take the job at 12 hours a week. She left a voice mail message for R. P. saying that she would not be taking the job.

[11] The Claimant testified that she was not aware that she would be paid for the orientation session or the computerized training session. She had not given her banking information to the employer. She did not receive any cheques from the retailer in the mail. She did not receive an ROE from the retailer. In September 2019 her EI benefits were stopped and she contacted the Commission. The Commission staff told the Claimant that she had been paid by the retailer. She replied that she had not received a dime from the retailer. On October 3, 2019, R. P. told the Commission that he was still trying to get a hold of the Claimant because he had cheques for her. The Claimant testified she saw the ROE for the first time when she received the reconsideration file in response to her appeal to the Tribunal.

[12] The Commission submitted that the Claimant was hired for a job with the retailer but when she went to orientation she realized that they would only guarantee 12 hours' work a week. She assumed she would lose her EI benefits if she worked any hours so she quit. She had also applied for a casual position with the provincial liquor corporation and as they had contacted her references, she wanted to leave herself open for that job.

[13] With respect to working at the liquor corporation, the Claimant submitted that the Commission did not have the time line correct. She testified that she applied for the liquor corporation job in August 2019 and was interviewed for that job in October 2019. She said that when the Commission recorded that she did not respond to one of their questions when it was speaking to her on November 4, 2019, it was because she was using an internet based phone and the connection dropped out. I accept the Claimant's testimony that she was interviewed for the liquor corporation job in October 2019. The Commission's records show its agent first spoke to the Claimant on October 1, 2019. She told the agent at that time she had switched to an internet

phone. When discussing her refusal of the 12 hours work at the retailer, the Claimant is recorded as saying “at the same time she also went for a job at the liquor store.”

[14] I find the Claimant was not employed with the retailer because she did not accept their offer of employment. R. P. told the Commission that an outside agency does their recruiting. The outside agency posts the jobs on Indeed and the retailer’s website. Applicants go on-line and do a survey test. If the test meets the criteria they are invited to the next step, an interview. R. P. told the Commission, “Eventually when it gets down to a job offer [outside agency] sends an email to the applicant with a job offer; the applicant accepts and then are scheduled for orientation and given dates of orientation.” The Claimant testified that she received an emailed invitation to an orientation and that there was no indication in the email of the hours or work. R. P. said “he is able to see this part once the applicant accepts, he can see the list of people and on what dates they will do the orientation.” Based on the statements R. P. made to the Commission and the Claimant’s testimony, I find that, on a balance of probabilities, the Claimant accepted an invitation to an orientation session but not an offer of employment.

[15] The Claimant testified that she applied for a permanent cashier job. She believed the word “permanent” meant that the job was full time. R. P. told the Commission that “during the orientation they advise the employee of everything and advise them the job was part-time.” If the recruitment process was clear that the position the Claimant applied for was part-time, I think there would be no need to wait until the orientation session to advise the applicants that the position was part-time.

[16] The Claimant testified that she stated to R. P. that she applied for full-time work and that he convinced her to return for the computerized training because he was going to see if other departments were hiring full-time. I find that R. P. ’s actions of advising the job was part-time during the orientation session and then seeking additional hours of work for the Claimant, after she had attended the orientation session, indicates that there was an ongoing negotiation with respect to the job to be offered to the Claimant. R. P. told her during the computerized training no other work would be available. The Claimant declined to take the position on those terms.

[17] I find the compensation the Claimant received was for attending an orientation session where an offer of employment was made and a computerized training session where that offer of

employment was repeated. I note that the ROE does not provide an occupation. None of the Claimant's time was spent as an employee in the permanent cashier position that she applied for. As a result, I find that the Claimant received an initial offer of employment at the orientation session and declined that offer when it was repeated and it became clear that the position was not what she thought it would be. Accordingly, I find that the Claimant was never employed by the retailer.

[18] Because I have found the Claimant was not employed, there is no need for me to address whether she voluntarily left her employment without just cause.

CONCLUSION

[19] The appeal is allowed. The Claimant was never employed by the retailer, and therefore, she cannot be disqualified from EI benefits for voluntarily leaving an employment she never had.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	December 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. H., Appellant