



Citation: *MA v Canada Employment Insurance Commission*, 2023 SST 610

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## Decision

**Appellant:** M. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (545782) dated October 24, 2022 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** February 10, 2023

**Hearing participant:** Appellant

**Decision date:** February 16, 2023

**File number:** GE-22-3808

## **Decision**

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant was not employed by AG.

[3] This means he is not disqualified from receiving Employment Insurance (EI) benefits.

## **Overview**

[4] The Appellant was working at “MR” when he was laid off. Before the layoff from MR, another employer, “AG” had interviewed him about coming to work for AG. He contacted AG after the layoff from MR and was told he could come into AG to try out the job. He spent two days in training at AG, decided that he would not be able to earn the amount he was told he could earn and did not return to AG for a third day. He says that he did not accept a job with AG and did not work for them professionally.

[5] The Canada Employment Insurance Commission (Commission) viewed the two days of training as a job. It looked at the Appellant’s reasons for leaving the job. It decided he voluntarily left (or chose to quit) his job without just cause, so it wasn’t able to pay him benefits.

[6] I must decide whether the Appellant was employed. If I decide the Appellant was employed, I then have to decide if he has proven he had no reasonable alternative to leaving his job.

## **Matter I have considered first**

### **The employer is not an added party**

[7] Sometimes the Tribunal sends an appellant’s employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal sent the employer a letter. The employer did not reply to the letter.

[8] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal, because there is nothing in the file that indicates my decision would impose any legal obligations on the employer.

## Issue

[9] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

[10] To answer this, I must first address whether the Appellant was employed. If the Appellant was employer, I must decide whether the Appellant voluntarily left his job. I then have to decide whether the Appellant had just cause for leaving.

## Analysis

### – The Appellant was not employed

[11] The law says that if you quit your job without just cause, you cannot receive EI benefits.<sup>1</sup>

[12] The Commission is required to prove that the Appellant voluntarily left his employment.<sup>2</sup> Underlying this requirement is the need to prove the Appellant was actually employed.

[13] The Appellant said that he did not have a job with AG. He says that before he was laid off from MR a manager from AG had contacted him several times. The manager kept asking the Appellant to come to work with AG.

[14] The Appellant testified that about a week before he was laid off from MR he went to an interview with AG. There were three people from AG at the interview. At the interview he was told he would be paid a flat rate of \$350 for each new car sold and

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<sup>1</sup> See section 30(1), *Employment Insurance Act* (EI Act). This is how I refer to the legislation that applies to this appeal.

<sup>2</sup> *Canada (Attorney General) v White*, 2011 FCA 190. This is how I refer to court cases that apply to the circumstances of this appeal.

\$300 for each used car sold. The flat rates would increase if he sold more cars and there was bonus if he was among the top three salespersons for the month. The Appellant said he was told at the interview car sales were good, he could expect to sell 18 to 20 cars a month and would make a good living. He would be paid the flat rate once the customer took delivery of the car.

[15] The Appellant said after the interview with AG he told his boss at MR about it. He said his boss at MR tried to persuade him it was not a good job for him. Within days of that discussion, he was terminated without cause from his job with MR. The Appellant said he was in shock for a few days when he was laid off from MR. He said he was not doing anything during those few days.

[16] The Appellant testified he got a call from a manager at AG about coming to work with AG. He said the manager said he could come to AG and check it out for 3 or 4 days to see if he liked it. The Appellant said he went to AG for two days. He and two other people were trained in product knowledge on the first day. On the second day, he went to AG and there was a meeting with the managers. They were talking about the targets for sales.

[17] The Appellant said he spoke with other salespeople at AG. He used AG's computer to look on-line and saw there was very little inventory available. It could take between five and ten months for a car to arrive at the dealership after it was ordered for a customer. He was told by some salespeople at AG they were having a hard time selling cars due to this.

[18] The appeal file has an "Offer of Employment" dated May 16, 2022 with a start date of May 30, 2022. The Appellant testified that he saw this document for the first time when he received the GD3-Reconsideration File from the Tribunal. He said that on the first day he did sign some papers, but he did not read them. He thought the papers were to do with payroll.

[19] The Appellant testified he did not sign the Offer of Employment. On the second page of the Offer of Employment at the bottom of the page on the left side there is a

block above his name that has “DocuSigned by:” above some vertical lines and there is an alpha-numeric code below those lines. Below that block is the Appellant’s name and the title “Sales Associate” and “Date 5/17/2022” appeal. On the same page on the right side at the bottom there is another signature under “DocuSigned by:” with the alpha-numeric code below the signature. Below this block is the name “DH” and the title General Sales Manager. Below that is the date 5/16/2022.

[20] The Appellant testified the lines above his printed name look like it is his signature, but it is not exactly his signature. He said AG did not send him any documents electronically and he did not sign any documents electronically. The Appellant testified it did not make sense for him to have “signed” this document on May 17, 2022 because he lost his job with MR on May 16, 2022 and he did nothing for the few days following because he was in shock.

[21] The appeal file has a Record of Employment (ROE) issued by AG on June 17, 2022. It shows the reason for issuing as Quit. The ROE says the Appellant’s first day worked and last day for which paid were both May 25, 2022. He had 8 total insurable hours.

[22] The Appellant testified he was not aware he was being paid for attending the training. He noted that he was at AG for two days. Yet the ROE shows him as only being paid for one day.

[23] A representative of the employer spoke to a Service Canada officer on October 20, 2022. The representative said the Appellant would mostly earn commission selling vehicles. If a salesperson did not sell enough vehicles to have their commission equal or exceed the minimum wage, the employer would top up their salary to minimum wage as the base salary. She said employees are scheduled for 40 hours per week and they cannot work for nothing because that would be illegal. She said the Appellant would have been informed about the commission structure through the offer letter he signed on May 17, 2022.

[24] The Appellant testified he was not told about being paid minimum wage if he did not sell enough cars. He noted there is nothing in the Offer of Employment about his salary being topped up to minimum wage if he did not sell enough cars.

[25] The Appellant testified he did not return to AG on the third day. He received a call from the general manager asking him why he was not at AG that day. He told the general manager he did not like the job and AG did not train properly.

[26] The Commission says the Appellant accepted an offer of employment from AG. It says there is evidence of this because he signed and accepted the offer of employment. The Commission says this evidence shows the Appellant was employed by AG and therefore he voluntarily left his place of employment on May 25, 2022 when he decided not to go back.

[27] I find the Appellant was not employed with AG because he did not actually start the job he was hired to perform. The Appellant said he had an interview with three people from AG. He discussed the interview with his boss at MR in the week before he was let go from MR. At the interview with AG, he was told he would be paid a flat rate of \$350 for each new car sold and he could expect to sell 18 to 20 cars a month. The Appellant was told he could come to AG to try the job out for a few days to see if he liked it.

[28] The Appellant said he was not made aware he would be paid for the days he was at AG on May 25 and May 26, 2022. He also said he was not aware AG would pay him minimum wage if he did not sell enough cars in a month. I accept the Appellant's evidence on this point because it was given to me under affirmation, I was able to ask him questions about it and his testimony is consistent with the statements he gave to the Service Canada officers.

[29] The Commission is relying upon the Offer of Employment to establish the Appellant's employment with AG. I do not think the Offer of Employment is sufficient proof the Appellant was employed by AG when he spent time at AG on May 25 and 26, 2022.

[30] I note the Offer of Employment was signed by AG's general sales manager on May 16, 2022. This is the same day the Appellant was let go from MR.

[31] The Appellant said he did not receive any documents from AG electronically. He says the first time he saw the Offer of Employment was when he received the Reconsideration File (GD3) from the Tribunal. He has questioned whether he actually signed the document because he says the signature is not exactly like his and the document says it was signed on May 17, 2022 one day after he lost his job with MR, when he was in shock and did not do anything for a few days.

[32] I note the Offer of Employment states the Appellant's position is Sales Associate and the start date is May 30, 2022. The Offer of Employment does not make any reference to training prior to the start date. There is no reference to being scheduled for 40 hours per week as was described by the employer's representative. With respect to compensation, the Offer of Employment has commission rates that are \$50 more per vehicle than what the Appellant testified he would receive. There is no reference to AG topping up the Appellant's earnings to the level of minimum wage should his sales fall short of minimum wage as was described by the employer's representative.

[33] The employer told the Appellant he could try out the job for a few days to see if he liked it. The time the Appellant spent at AG occurred before his position of sales associate was set to start. None of the time he spent at AG was as a sales associate which was the position he had interviewed for and is listed in the offer of employment. During the two days the Appellant spent at AG it became clear to him the job he was offered was not what he thought it would be. He would not be able to sell 18 to 20 cars a month, as promised in the interview, because AG simply did not have the inventory to sustain that level of sales. The lack of inventory and the length of time for cars to be delivered to the dealership, when he would be paid commission only when the customer took delivery of the car, meant he would have no income for several months.

[34] The evidence tells me the Appellant received an initial offer of employment at an interview with AG. When he went to AG on May 25 and 26, 2022, he found out the job was not what he thought it would be. He told the general manager on May 27, 2022

that he did not like the job. In my opinion, this meant the Appellant was declining the offer of employment on May 27, 2022. As a result, I find he did not start the employment as offered with AG on May 30, 2022, which was the start date listed on the Offer of Employment. Accordingly, I find the Appellant was never employed by AG.

[35] Because I have found the Appellant was not employed, there is no need for me to address whether he voluntarily left his employment without just cause.

## **Conclusion**

[36] The Appellant was never employed by AG, and therefore, he cannot be disqualified from EI benefits for voluntarily leaving an employment he never had.

[37] This means the appeal is allowed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section