

Date: 20080513

Docket: A-344-07

Citation: 2008 FCA 184

**CORAM: DESJARDINS J.A.
SEXTON J.A.
EVANS J.A.**

BETWEEN:

ELITE MAC

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on May 13, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on May 13, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on May 13, 2008)

EVANS J.A.

[1] This is an application for judicial review by Elite Mac to set aside a decision of an Umpire (CUB 6842) dismissing, in part, Mr Mac's appeal from a decision of a Board of Referees, dated March 20, 2006. The Board had upheld a decision of the Canada Employment Insurance Commission (the Commission) that Mr Mac was not entitled to receive employment insurance benefits because he had voluntarily quit his employment, and was obliged to repay the benefits that he had been paid. The Umpire allowed the appeal against the Board's decision to uphold the

Commission's imposition of a penalty and a disqualification for misrepresentations. The Commission is not seeking review of this aspect of the Umpire's decision.

[2] Mr Mac had been employed in Toronto as a sales representative by Applewood Apparel Inc./Explorer Headgear Inc. (Explorer) until February 18, 2005, when he quit following a dispute with his employer. The Commission accepts that Mr Mac did not leave this employment voluntarily.

[3] However, Mr Mac had also had part-time employment (7-9 hours per week) with Best Buy Canada Ltd., a fact which he did not disclose to the Commission when he applied for employment insurance benefits. In 2004, he earned \$5,633 from this employment. He quit this employment on February 28, 2005, very shortly after the termination of his employment with Explorer.

[4] The Board of Referees found that he was disqualified from employment insurance benefits under sections 29 and 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act), since he had voluntarily quit his employment with Best Buy, and had not established that he had "no reasonable alternatives to leaving".

[5] In upholding this decision, the Umpire noted that the Board had found that Mr Mac did not ask Best Buy for more hours of work, nor took up the employer's offer to assist him to obtain employment with Best Buy in Vancouver, where Mr Mac had decided to relocate because he could be supported there by his family while he pursued more favourable employment opportunities. Mr

Mac's wife had moved to Vancouver after he left Explorer because of their loss of income and the high cost of living in Toronto.

[6] The standard of review applicable to a decision of an Umpire is correctness on questions of law and unreasonableness on the application of the law to the facts.

[7] Counsel for Mr Mac argued that the Umpire erred in law because paragraphs 29(c)(vii) and (ix) of the Act apply here, since, as a result of leaving his job with Explorer, there was a significant modification of his terms and conditions of employment and work duties. We do not agree. The relevant employment for the purpose of section 29 is Mr Mac's employment with Best Buy, which he left approximately one week after terminating his employment with Explorer. Best Buy did not change his terms and conditions of his employment or his work duties.

[8] Having found that the Umpire committed no error of law in his interpretation of the Act, we are not persuaded that, on the basis of the record, it was unreasonable to conclude that Mr Mac voluntarily quit his employment with Best Buy.

[9] For these reasons, the application for judicial review will be dismissed with costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-344-07

STYLE OF CAUSE: ELITE MAC v. AGC

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