

Decision of Adjudicator in the Matter of an Adjudication pursuant to
Sections 2-75 and 4-6 of *The Saskatchewan Employment Act*
LRB File No. 249-24
Wage Assessment No. 1-000890

APPEALLANT: Alpha Physical Therapy & Health Center P.C. Ltd. ("Alpha")
Mohammed Nazari, Director ("Mo").

RESPONDENTS: Becky Middleton ("Becky")

DATE OF HEARING: August 19, 2025

PLACE OF HEARING: 3rd Floor Boardroom
1870 Albert Street, Regina, SK



i. Introduction

I was selected as Adjudicator for this appeal on March 12, 2025. On March 24, 2025, I received relevant appeal documents from the Ministry. My review of the documents satisfied me that compliance with subsection 2-74(6), 2-75(2) and 2-75(3) of the Employment Standards Act (the "Act") had been met. Therefore, I have jurisdiction to hear this appeal.

Tanya Turgeon, Employment Standards Officer, represented the Director of Employment Standards ("Tanya").

Muhammad Nazari, Alpha Director represented the Centre.

ii. Preamble

Late in 2024, Alpha was served with two wage assessments (1-000908 and 1-000890) resulting from two employee complaints. Alpha appealed both wage assessments and I was selected to adjudicate both appeals.

The first appeal (Wage Assessment 1-000908) was heard and my decision rendered on April 21, 2025. I scheduled the second appeal hearing for May 1, 2025. After opening that hearing Mo advised that he was getting legal advice regarding an appeal to the Saskatchewan Labour relations Board to overturn my decision for Wage Assessment 1-000908.

I decided to adjourn the hearing for W.A. 1-000890 until the status of W.A. 1-000908 was finalized.

Alpha subsequently appealed that decision to the Saskatchewan Labour Relations Board. The Board heard that appeal and on July 24, 2025, rendered their decision (Alpha Physical Therapy v Director of Employment Standards, 2024 SKLRB 32).

The relevant part of the decision concerned whether a portion of the Complainants earnings was a discretionary bonus or a commission. The Board confirmed my determination that the portion on earnings was a commission and therefore payable along with regular wages. Alpha's appeal was dismissed.

The Board dismissal of Alpha's Appeal allowed me to then hear the appeal of Wage Assessment 1-000890, made on behalf of Becky Middleton.

iii. Preliminary Matters

1. Tanya tabled a document with 8 tabs and it was marked Exhibit EE1. She referred to tab 1, heading "Agreed Statement of Facts". The facts listed were:
 - Becky Middleton was employed from April 24, 2023, to August 30, 2024, as an assistant manager/reception. Her pay was \$25.00/hr plus a commission. She worked Monday to Friday, 8 hours per day, 40 hours per week.
 - Should Alpha's appeal be dismissed and the Wage Assessment upheld, the amount owing of \$3,032.20 is correct.

All three parties agreed to the statement of facts.

2. The Wage Assessment is made up of commission earned and annual holiday pay.
3. Alpha is claiming that Becky was paid in error for time when she was away from work attending to her husband who was having medical issues. The amount of overpayment is \$1692.30.
4. Alpha is also claiming that Becky owes \$545.22 on unpaid premiums for the office provided Medical Plan.

iv. Facts

1. Evidence of the Employer

Mo tabled a document that was marked Exhibit ER1. The document is an email from Mo to Becky sent on April 12, 2023. The email is titled "Offer for working with us at Alpha".

It goes on to state:

"As discussed, your pay will be \$25 per hour plus an annual commission of 4% of a certain amount that as of now it translates into around \$2.00 per hour. This yearly commission will be paid on June 1st of the year after while employed."

Mo testified that this letter of offer was the same as he made to the employee covered by Wage Assessment 1-000908, except he added "while employed" to Becky's offer. He explained to Becky in person, that it was designed to be a retention incentive, so that she has to stay until June 1st of the year following to get paid.

He feels that her salary of \$25/hr was a more than fair rate for that job and with the retention bonus made it a very well paid job.

Mo went on to explain that he did not know the difference between a retention bonus and a commission as well as not knowing the jurisdiction of the labour board.

During her employment, he allowed Becky time off so she could attend to her husbands needs while he was sick. He was being a nice guy but will never be that again. He will make himself into a strict employer.

After Becky quit, he found that she had been paid for more time than he had agreed to pay. Another employee prepared the payroll, and he signed the cheques without proper scrutiny.

On October 27, 2024, he sent Tanya an email (marked ER2) requesting that the Wage Assessment be reduced by \$1,692.30 for overpaying when Becky was not at work. The email also requests \$545.22 be deducted from the Wage Assessment for unpaid medical coverage premiums.

Mo went on to advise that Becky had also lost her security key which cost him some money to replace. He did not ask her for repayment for this issue.

Cross Examination

None

2. Evidence of the Employee

Becky testified that she began work for Alpha on April 24, 2023,

She received an email from Mo on April 12, 2023, which set out the conditions for her employment (ER1). The email set out her salary at \$25/hr along with a 4% commission estimated to be about \$2/hr. The email went on to state the commission would be paid out on June 1st of the year after while employed. She understood that to mean "while employed there".

Mo never explained that "while employed" meant, never explained "retention bonus", he always referred to it as a "commission".

She believed the commission was for her increasing the patient numbers so that the centre's profits increased. That is why she left her old job and started with Mo.

She received her first commission payout on June 1, 2024, but she never figured out why then and not December 31, 2023.

When she resigned on Friday, August 16, 2024, Mo told her that he would pay her commission on September 13th after the Accountant finalized the number. She told him she would come pick it up on the 13th. This reinforced her expectation that her commission would be paid out at the end of her employment.

Her resignation (Exhibit EE2) was sent by email on August 16, 2024. She gave August 30, 2024, as her last day of work. She requested her commission to be paid out along with her final cheque. Mo's reply did not speak to the commission, he simply wished her the best.

She first heard about the term "retention bonus" at the first scheduled hearing on May 1, 2024. She was never told her commission would be held until June 1st of the following year. The first she ever heard was by email from Mo on April 9, 2024 (Exhibit EE1, TAB 6, page 2).

Mo had told her verbally she would be paid her commission, but she never did get it.

Regarding Mo's alleged overpayment she wonders if the topic is related to this hearing, but regardless, she never requested to be paid for her absence.

He offered to cover work missed for her husband's appointments.

She would have taken the time without pay if he hadn't offered to pay her.

Mo signed all the timesheets and pay cheques, and he looked at them before signing so if there was a problem he could have raised it at the time. There was no correspondence between them on the topic of time off for her to care for her husband.

Tanya referred to EE1, TAB 8 where the Ministry sets out their position on overpayment. That position is that Becky was on approved leave with pay and therefore was covered by the Act under Section 2-7, a more favourable condition.

Tanya went on to suggest that as the Employer, Mo was in a position to determine whether Becky's timesheets were accurate or not when submitted. His subsequent approval of each provided that "more favourable condition".

Tanya also advised that the medical premium raised by Mo, was deducted from the Wage Assessment amount.

Cross Examination

None

v. Final Argument

Employer:

Mo suggests that Becky was not paying attention when he explained the "while employed" condition for payment of her commission. There is no way she could not have understood.

He is disappointed that despite his generosity Becky never reciprocated once. She only gave two weeks for notice, leaving him little time to replace her. She treated his humanity with legality. He

trusted former employee, Carey, when she prepared the paycheques, and he signed them in good faith.

He requests the overpayment be subtracted from the Wage Assessment.

Employee:

Tanya referred to Exhibit EE1, Tab 8, which contains the Ministries written argument along with case law. The Ministry refers to Section 2-1(v) of the Act which states that commissions are part of wages. Further Section 2-15 states that employers must pay employees their total wages earned in accordance with the terms and conditions of their employment contract.

Alpha's request to deduct from the wage assessment an overpayment for a portion of Becky's absences to attend to her husband, the Ministry contends, should have been dealt with, by Mo, at the time of the absence. By paying her he created a "more favorable condition" and can't be retracted after the fact (see Section 2-7 of the Act).

Lastly the Ministry agreed that Becky owed \$545.22 for her coverage under the office Medical Plan and that amount has been deducted from the wage assessment leaving \$3032.20 owing her by Alpha.

I thanked the parties for their presentations and closed the hearing

vi. Decision

Both wage Assessments 1-000908 and 1-000890 are for unpaid wages earned as commissions. My decision for W.A. 1-000908, upheld by the Saskatchewan Labour Relations Board, ruled that commissions are part of wages and as such are to be paid out in the same fashion as regular wages. Therefore, my decision for the appeal to Wage Assessment 1-000890 is the same.

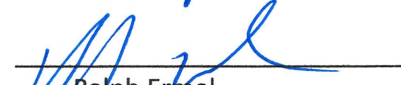
Mo's request for repayment of unauthorized wages paid to Becky for some of her absences was not included in his written notice of appeal nor was the relief requested (see section 2-75(3)). Having noted this oversight, I wish to point out that as the owner, operator of Alpha Physical Therapy and Health Center, and as evidence showed, signatory to both timesheets and pay cheques, he knew or ought to have known which absences were or were not approved leave with pay at the time the leaves being taken.

Therefore, he had the opportunity to take the appropriate action at the time. In not doing so he created a more favourable condition as pointed out by the Ministry, and therefore the wage assessment will not be reduced.

Lastly, Mo's request that the wage assessment be reduced by the amount of \$545.22 for unpaid medical premiums, the Ministry shows in the calculations of the wage assessment that it is agreed the premiums were owed by Becky and that amount was taken from the wage assessment total.

Therefore, my decision is that the wage assessment in the amount of \$3032.20 comprised of unpaid commissions and annual holiday pay is owed to Becky Middleton by Alpha Physical Therapy and Health Center.

Dated at Regina in the Province of Saskatchewan, this 2nd day of September, 2025.



Ralph Ermel
Adjudicator