



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Canada Employment Insurance Commission*, 2019 SST 229

Tribunal File Number: GE-18-3586

BETWEEN:

M. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: January 15, 2019

DATE OF DECISION: January 29, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant worked for a large grocery store chain. For financial reasons, the employer decided to close 10 stores in the region and the Appellant was an employee at one of the affected stores. The employer offered employees at the closing stores the option of exercising seniority rights and moving to another store or accepting an offer of severance pay. The Appellant chose to leave her employment and accept severance pay. She applied for employment insurance benefits, but the Canada Employment Insurance Commission (Commission) determined that she was disqualified from receiving benefits because she had voluntarily left her employment without just cause. The Appellant requested a reconsideration, arguing that she had left her job as part of a work-force reduction process. The Commission maintained its initial decision and the Appellant appealed to the Social Security Tribunal (Tribunal).

[3] I am satisfied that the employer was engaged in a work-force reduction process because I find that the employer initiated the process, that the employer intended to permanently reduce the number of employees, and that the employer gave employees the option of voluntarily leaving. I find that the employer documented these elements. I find that the Appellant voluntarily left her employment as part of the work-force reduction process, and I am satisfied that she preserved the job of co-workers by leaving. As a result, I find that she has proven her entitlement to employment insurance benefits.

ISSUES

- Issue 1 – Was there a work-force reduction process?
 - Was the process initiated by the employer?
 - Was the objective a permanent reduction in the overall number of employees?
 - Did employees have the option of leaving the employment voluntarily?
 - Was each element documented by the employer?

- Issue 2 – Did the Appellant stop working due to the work-force reduction process?
 - Did the Appellant accept the employer’s offer to leave voluntarily?
 - Did the Appellant’s leaving preserve the employment of a co-worker who would otherwise have been terminated?
 - May the Appellant receive employment insurance benefits?
- Issue 3 – Should I consider the issue of whether or not the Appellant proven that she had just cause for voluntarily leaving her employment?

ANALYSIS

[4] A claimant who voluntarily leaves employment without just cause is disqualified from receiving employment insurance benefits (subsection 30(1) of the *Employment Insurance Act* (EI Act)).

[5] However, a claimant who voluntarily leaves employment as part of a work-force reduction process may receive employment insurance benefits (section 51 of the *Employment Insurance Regulations* (EI Regulations)). In order to meet the requirements of the EI Regulations, a work-force reduction process must meet certain conditions:

1. The employer must initiate the process;
2. The objective of the work-force reduction process must be to permanently reduce the overall number of employees;
3. Employees must have the option of leaving the employment voluntarily; and
4. The employer must document each of the elements of the process (subsection 51(2) of the EI Regulations).

[6] Each of these conditions must be met in order for the process to be a work-force reduction process as described in the EI Regulations (*Canada (Attorney General) v. Williams*, 2010 FCA 271).

[7] In order for a claimant involved in a work-force reduction process to receive benefits, the claimant must accept the employer's offer and voluntarily leave the employment. The employer must confirm that the claimant's decision to leave has actually preserved the job of a co-worker who would have otherwise been terminated as a result of the work-force reduction (subsection 51(1) of the EI Regulations).

Issue 1: Was there a work-force reduction process?

[8] I find that there was a work-force reduction process that was initiated by the employer. I find that the process was intended to permanently reduce the overall number of employees and I find that employees were given the option of leaving voluntarily. I find that the employer documented these elements of the process through letters to employees and the union and a frequently asked questions (FAQ) document given to employees.

Was the process initiated by the employer?

[9] At the hearing, the Appellant's representative argued that the employer initiated the process by sending termination letters to affected employees and to the union, advising them that it was closing several stores in British Columbia (BC) for financial reasons. According to the termination letter addressed to the Appellant, the Appellant's store was one of the 10 stores that would be closing.

[10] Given that the employer notified employees that it was closing 10 stores and issued termination letters to affected employees, I am satisfied that the employer initiated the work-force reduction process.

Was the objective a permanent reduction in the overall number of employees?

[11] I find that the purpose of the process was to reduce the overall number of employees.

[12] According to the letter addressed to the Appellant and the union, the employer was closing 10 stores, and there were 1026 employees employed at these stores. The letter states that this decision to close stores was made for financial reasons. In a supplementary document, the employer noted that all employees at the closing stores were eligible for severance pay, to be calculated according to their collective agreement and seniority. I also note that, according to the

supplementary FAQ document, employees at non-closing stores could also request separation and severance pay and that the employer would consider their requests on a case-by-case basis.

[13] I give weight to the employer's information about the number of stores closing, the number of employees affected, the reference to financial reasons, and the fact that all employees at closing stores were given the option of ending the employment relationship and accepting severance pay. I also give significant weight to the fact that the employer was willing to consider severance requests from employees at non-closing stores. I find that, by considering severance requests from employees at non-closing stores, the employer was attempting to reduce the overall number of employees in the region. Given these factors, I find, on a balance of probabilities, that the employer's intention was to permanently reduce the total number of employees.

Did employees have the option of leaving the employment voluntarily?

[14] According to the employer's FAQ document, all employees working at closing stores had the option of leaving their employment and accepting severance pay. The FAQ also stated that employees at non-closing stores could request severance as part of the process and that the employer would consider their requests on the basis of business needs. Given this evidence, I am satisfied that all employees at closing stores had the option of voluntarily leaving their employment.

Was each element documented by the employer?

[15] The employer sent letters to the union, to employees, and provided a supplementary FAQ document describing its intention to close 10 stores for financial reasons and that over 1000 employees would be affected. The letters and FAQ document state that all employees at closing stores had the option of leaving the job and accepting severance pay; furthermore, the employer was also willing to consider requests for severance from employees at non-closing stores.

[16] I also note that, according to the FAQ document, the employer issued Records of Employment for several employees stating that they stopped working due to a work-force reduction process. I give weight to this fact; I find that it suggests that the employer had considered the elements of the EI Regulations related to a work-force reduction process.

[17] I am satisfied that the employer initiated the process, that the purpose of the process was to permanently reduce the overall number of employees, and that employees had the option of leaving voluntarily. As a result, I find that this work-force reduction process meets each of the elements set out in the EI Regulations. Furthermore, I find that, by describing the process in its letters and in the FAQ document, the employer documented each element of the work-force reduction process.

Issue 2: Did the Appellant stop working due to the work-force reduction process?

[18] I am satisfied that the Appellant voluntarily left her employment as part of the employer's work-force reduction process.

Did the Appellant accept the employer's offer to leave voluntarily?

[19] The Appellant has consistently stated that she stopped working because she accepted the employer's offer of voluntarily leaving her employment and receiving a severance package. The employer does not dispute the Appellant's statements, and so I am satisfied that the Appellant stopped working because she accepted the employer's offer to leave her employment voluntarily.

Did the Appellant's leaving preserve the employment of a co-worker who would otherwise have been terminated?

[20] I find, on a balance of probabilities, that the Appellant preserved the employment of a co-worker by voluntarily leaving her employment.

[21] In conversation with the Commission, the employer stated that they closed 10 stores in the region, but that there were still 30 stores that would remain open. The employer stated that they could not say whether or not the Appellant's decision to leave preserved the employment of another employee because their business was sales-driven.

[22] At the hearing, the Appellant's representative argued that the Appellant had the highest seniority of all of the X at the closing stores. He argued that, given the Appellant's seniority, it was obvious that she preserved the employment of those with less seniority when she left her employment because she did not bump anyone with less seniority.

[23] The Appellant's union representative testified that the Appellant was an employee with accommodation rights, and that this meant that she had the right to work in the X. The union representative testified that, if the Appellant had chosen to exercise her seniority rights, the union would have had to consider bumping a X employee at another store in order to provide a suitable position for the Appellant.

[24] The union representative testified that 120 employees, including the Appellant, chose to leave voluntarily, and that the remaining 30 stores had to absorb 670 employees from the 10 closing stores. She testified that she had not yet seen the effect on the work schedules at the remaining stores, but stated that employees with lower seniority at the remaining stores would likely face increasingly reduced hours as the remaining stores absorbed the employees from closed stores. She testified that it was likely that the lowest seniority employees would eventually be laid off due to a lack of hours.

[25] I acknowledge that the employer must confirm that the Appellant's decision to leave preserved the job of a co-worker. However, I note that, according to the record of conversation prepared by the Commission, the employer was unwilling to confirm or deny whether the Appellant's decision to leave preserved the job of a co-worker. Given the lack of evidence on this point from the Commission or the employer, I find that I must consider all of the evidence and determine whether the Appellant has proven her entitlement to employment insurance benefits.

[26] The standard of proof in employment insurance matters is the balance of probabilities (*Canada (Attorney General) v. Corner*, A-18-93). As a result, I find that I may consider, on a balance of probabilities, whether the Appellant's decision to voluntarily leave her employment preserved the employment of a co-worker.

[27] I give weight to the union representative's testimony, and so I am satisfied that, had the Appellant chosen to exercise her seniority rights, the union would have had to consider placing her in the X at a remaining store. I am satisfied that this would have directly put the employment of another employee at risk. I also accept that, had she exercised her seniority rights, the Appellant would have put the employment of others with lower seniority at risk. Given that the employer had over 670 employees from 10 closing stores to absorb into its 30 remaining stores, I

find, on a balance of probabilities, that the Appellant's decision to remove herself from that process preserved the employment of those with less seniority. As a result, I am satisfied that the Appellant preserved the employment of co-workers by voluntarily leaving her employment.

May the Appellant receive employment insurance benefits?

[28] I find that the Appellant voluntarily left her employment as a result of a work-force reduction process that meets the requirements set out in the EI Regulations. I find that her decision to leave her employment preserved the employment of co-workers who would otherwise have been laid off, and so I find that the Appellant has proven her entitlement to employment insurance benefits.

Issue 3: Should I consider the issue of whether or not the Appellant proven that she had just cause for voluntarily leaving her employment?

[29] The EI Regulations state that, "notwithstanding" section 30 of the EI Act, employees who voluntarily leave employment as part of a work-force reduction process are entitled to receive employment insurance benefits. I am satisfied that the Appellant voluntarily left her employment as part of a work-force reduction process that meets the requirements of the EI Regulations; as a result, I find that the Appellant does not have to prove that she also had just cause for voluntarily leaving her employment in order to receive employment insurance benefits.

[30] I decline to consider whether or not the Appellant has proven whether or not she had just cause for voluntarily leaving her employment because I find that she has proven that she is entitled to receive benefits because she voluntarily left her employment as part of a work-force reduction process.

CONCLUSION

[31] The appeal is allowed.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	January 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. H., Appellant Andrew De Saint-Pierre, Representative for the Appellant