

NO. A09-1265

State of Minnesota
 In Court of Appeals

MEDICAL PROFESSIONALS, LLC,

Relator,

vs.

SARA V. WERNER,

Respondent,

and

DEPARTMENT OF EMPLOYMENT
 AND ECONOMIC DEVELOPMENT,

Respondent.

RELATOR MEDICAL PROFESSIONALS, LLC'S
 REPLY BRIEF AND SUPPLEMENTAL APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	II
REPLY ARGUMENT.....	1
CONCLUSION	5
INDEX TO SUPPLEMENTAL APPENDIX	6

TABLE OF AUTHORITIES

Page

CASES

<u>Baker v. Fanny Farmer Candy Shops No. 154,</u> 394 N.W.2d 564 (Minn. Ct. App. 1986).....	4
<u>Colglazier v. University of Minnesota,</u> 2008 WL 2885832 (Minn. Ct. App. July 29, 2008).....	5
<u>Dachel v. Ortho Met., Inc.,</u> 528 N.W.2d 268 (Minn. Ct. App. 1995).....	3
<u>Franssen v. Precision Design, Inc.,</u> 2001 WL 766853 (Minn. Ct. App. July 10, 2001).....	1, 4
<u>Hahn v. Adecco USA Inc.,</u> 2009 WL 113375 (Minn. Ct. App. Jan. 20, 2009).....	5
<u>Johnson v. Walch & Walch,</u> 696 N.W.2d 799 (Minn. Ct. App. 2005).....	2
<u>Preiss v. Commissioner of Economic Security,</u> 347 N.W.2d 74 (Minn. Ct. App. 1994).....	1
<u>Sutton v. East Metro Clean N Press Inc.,</u> 2009 WL 3735878 (Minn. Ct. App. Nov. 10, 2009)	2, 3, 5

STATUTES

Minn. Stat. § 268.095, subd. 3(a)(3).....	2
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REPLY ARGUMENT

Four points raised in Respondent's Brief warrant comment beyond the argument already presented in Relator Medical Professionals' Principal Brief. First, and perhaps most telling, is that Respondent's Brief is completely devoid of case law in support of its position. Instead, Respondent meekly attempts to distinguish Relator's on-point cases involving commuting. For instance, Respondent characterizes Franssen v. Precision Design, Inc., 2001 WL 766853 (Minn. Ct. App. July 10, 2001) (RA-18) (finding commute of 27 miles reasonable) and Preiss v. Commissioner of Economic Security, 347 N.W.2d 74 (Minn. Ct. App. 1994) (RA-21) (finding commuting of 22 miles reasonable) as "totally inapplicable" because they do not involve an applicant facing an 85-mile commute. Respondent's Brief, p. 12. Respondent ignores, however, that Respondent Sara Werner ("Werner") voluntarily chose to drive the 85 miles into the metropolitan area. Indeed, Respondent readily admits that the statute is objective and there is no "eggshell skull rule" in the unemployment insurance context. Respondent's Brief, p. 7-8. Accordingly, the Court should compare Werner to the average, reasonable worker living and working in the metropolitan area. Moreover, this Court recently reaffirmed that an increased commute, after an employer's relocation, does not constitute good reason to quit. See Sutton v. East Metro Clean N Press Inc., 2009 WL 3735878 (Minn. Ct. App. Nov. 10, 2009).

In Sutton, the employer closed down its Blaine location but offered the employee continued employment at the Vadnais Heights location (adding approximately ten miles

to employee's commute) and the Roseville location (adding approximately 6 miles to employee's commute). Id. at *1. The employee chose to quit over continuing her employment at one of the alternative locations because "the other stores were located further from her home with no increase in pay to offset her extra driving" and because she didn't think the other job was very stable. Id. The court noted that it had previously "held that an employee's relocation to a different worksite, after a previous location closed, was not good reason to quit caused by the employer, even though the employee, a hairstylist, stated she believed she would experience income loss by losing clients with the relocation. Id. at *2 (citing Johnson v. Walch & Walch, 696 N.W.2d 799, 802 (Minn. Ct. App. 2005)). The court found that because the employee's new job assignment had substantially equivalent terms to her former assignment, the increased driving expenses and her apprehension that the new store may shut down "may constitute valid personal reasons for her to quit, but they do not qualify as reasons that 'would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.'" Id. at *3 (quoting Minn. Stat. § 268.095, subd. 3(a)(3)).

Here, after the relocation, Werner held the same position she had prior to the relocation, albeit with increased driving time and costs. Werner's primary reason for quitting, however, was the increased costs. Specifically, Ms. Werner testified:

Q. Wells Ms. Werner I've got to tell you looking over your documents, all of them seem to say specifically on exhibit 5 that your primary reasons that you could no longer financially continue to work.

A. Correct.

Q. Was that the largest consideration.

- A. The cost was, yes, one of the largest and it was going to be ...
- Q. One of the or the. You called it your primary reason.
- A. Financially it was my primary reason. But there was also secondary reasons that I discussed with Lisa.

(T. 17).

The increased commuting costs, however, do not qualify as reasons that would compel an average, reasonable person to quit. See Sutton, 2009 WL 3735878, at *3. The increased gas costs translates into an annual pay decrease of approximately 4-5% a year and Respondent's admit that a 10% pay cut would likely not be a good reason to quit. (T. 15); Respondent's Brief p., 8; see also Dachel v. Ortho Met., Inc., 528 N.W.2d 268, 270 (Minn. Ct. App. 1995) (holding that a wage reduction of approximately 10% does not provide employee with good cause to quit).

Second, Respondent characterizes Relator's office relocation as moving to a "distant location" that is a "great distance away." Respondent's Brief. pgs., 1, 5, 15. Despite Respondent's curious description of the relocation, the fact remains that Relator moved from Bloomington to St. Paul. (T. 18). Thus, it is arbitrary or capricious for the ULJ to hold that a 17-mile move within the metropolitan area would compel an average, reasonable worker to quit their gainful employment. See e.g., Franssen, 2001 WL 766853, at *1-2 (RA-18) (indicating that employees should be willing to commute to most locations throughout the metropolitan area and thus finding a commute of 27 miles to be reasonable).

Third, Respondent erroneously argues that “Relator’s brief would have this Court embrace the absurd result that an employee is entitled to quit and receive benefits if her employer moves 85 miles away, even if the office moves across the street from the employee’s house, while denying benefits when an employer moves some lesser distance.” Respondent’s Brief p., 11. On the contrary, Relator’s position is that the Court should focus on the additional distance an employee is required to commute in determining whether an average, reasonable employee would quit instead of driving to the new location to remain employed. See Relator’s Principal Brief pgs., 6-7. To that end, if a 17-mile increased commute would compel the average, reasonable employee to quit, all of Relator’s employee’s who lived on the west side of Bloomington would be entitled to quit and receive unemployment benefits because they too would experience the same increased commute and costs that Werner experienced.

Fourth, Respondent’s half heartedly argue that the relocation somehow constitutes a breach of the employment agreement. Respondent’s Brief p., 15. For this proposition, Respondent’s cite to Baker v. Fanny Farmer Candy Shops No. 154, 394 N.W.2d 564 (Minn. Ct. App. 1986), which involved an employee hired with the specific understanding that she would work the day shifts. Baker, however, is distinguishable in that the material change of employment terms was being forced to work nights instead of days, not employer relocation. Respondent cites to no cases holding that an employer’s relocation constitutes a breach of the employment agreement. In fact, most employees are hired with the understanding that they will be working at a certain location. Thus, Respondent’s are essentially taking the position that because an employee is hired into a

specific location, anytime the office is relocated, it would constitute a breach of the employment agreement. Such a position is illogical and unsupported by the law. Relator has cited to multiple cases in which courts have held that where an employee quits because of an increased commute to a new location, it does not constitute "good reason caused by the employer." See e.g., Sutton, 2009 WL 3735878; Hahn v. Adecco USA Inc., 2009 WL 113375 (Minn. Ct. App. Jan. 20, 2009) (RA-28); Colglazier v. University of Minnesota, 2008 WL 2885832 (Minn. Ct. App. July 29, 2008) (RA-25).

CONCLUSION

For the foregoing reasons, Relator respectfully requests that the Court reverse the Unemployment Law Judge and hold that Relator's decision to relocate from Bloomington to St. Paul would not compel the average, reasonable person to choose unemployment rather than continue gainful employment.

Dated: November 23, 2009.

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