

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.

RESPONDENT-DEPARTMENT'S BRIEF AND 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).

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Legal Issue

Under the law, an individual who quits employment for other than a defined set of reasons is ineligible for all unemployment benefits. One of those reasons is quitting due to something adverse to the worker, for which the employer is responsible, and that would compel an average, reasonable worker to quit. Relator Sara Werner quit her employment at Medical Professionals, LLC after her employer moved its offices a great distance away, substantially lengthening Werner's commute. Would these employment conditions have compelled an average, reasonable worker to quit and become unemployed?

The Unemployment Law Judge Bryan Eng found Werner quit for a good reason caused by Medical Professionals, and found Werner eligible for unemployment benefits.

Statement of the Case

The question before this court is whether Werner is entitled to unemployment benefits. Werner established a benefit account with the Minnesota Department of Employment and Economic Development (the "Department"). A Department adjudicator determined that Werner was ineligible for benefits, because she left employment for other than a good reason caused by her employer.¹ Werner appealed that determination, and Unemployment Law Judge

¹ E-1(1). Transcript references will be indicated "T." Exhibits in the record will be "E-" with the number following.

(“ULJ”) Bryan Eng held a de novo hearing. The ULJ held that Werner quit her employment for a good reason caused by the employer, and found her eligible for benefits.² Medical Professionals filed a request for reconsideration with the ULJ, who affirmed.³

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Relator under Minn. Stat. § 268.105, subd. 7(a) (2008) and Minn. R. Civ. App. P. 115.

Department’s Relationship to the Case

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁴ As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds, the employer not being the determiner of entitlement.⁵ This was later codified.⁶ The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an Unemployment Law Judge’s decision.⁷

² Appendix to Department’s Brief, A5-A9.

³ Appendix, A1-A4.

⁴ Minn. Stat. § 116J.401, subd. 1(18).

⁵ 545 N.W.2d 372, 376 (Minn. 1996).

⁶ Minn. Stat. § 268.069, subd. 2.

⁷ Minn. Stat. § 268.105, subd. 7(e).

The Department does not represent the co-respondent in this proceeding and this brief should not be considered advocacy for Sara Werner.

Statement of Facts

Sara Werner was employed as a full-time billing specialist at Medical Professionals, LLC from March of 2005 through April 2, 2008, with a final annual salary of \$38,500.⁸ Throughout her employment Werner lived in Good Thunder, Minnesota, a small town south of Mankato, and commuted to Medical Professional's office in Bloomington, Minnesota.⁹ This was a 170 mile round-trip commute, and took Werner approximately three and a half hours a day.¹⁰

In April of 2008, Medical Professionals decided to move its offices to St. Paul, Minnesota.¹¹ This would have added 34 miles and at least approximately one more hour to Werner's round-trip commute.¹² It would also have increased her gas costs by about \$40 a week, with concomitant wear and tear on her vehicle.¹³ Werner complained to her employer, explaining her increased commuting time and costs, and asked if she could either be compensated for her increased costs or work from home for part of the week.¹⁴ Her employer declined her requests, and on April 2, 2008, Werner quit her employment because of the

⁸ T. 9-10.

⁹ T. 11.

¹⁰ T. 11, 16.

¹¹ T. 13.

¹² T. 14.

¹³ T. 15.

¹⁴ T. 16.

additional length and costs associated with commuting to Medical Professionals new office.¹⁵

In his decision, the ULJ determined that Werner quit her employment for a good reason caused by Medical Professionals.

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if relator's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.¹⁶

The Court of Appeals has stated on a number of occasions that whether and why an applicant quit employment are questions of fact for the ULJ to determine.¹⁷ The Court of Appeals held in *Skarhus v. Davannis*, that it views the ULJ's factual findings "in the light most favorable to the decision,"¹⁸ and gives deference to the ULJ's credibility determinations.¹⁹ The Court also stated that it

¹⁵ T. 16-17.

¹⁶ Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2008).

¹⁷ *Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380, 382 (Minn. App. 1986);

Midland Electric Inc. v. Johnson, 372 N.W. 2d 810, 812 (Minn. App. 1985).

¹⁸ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

¹⁹ *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), review denied (Minn. Dec. 20, 2000)).

will not disturb the ULJ's factual findings when the evidence substantially sustains them.²⁰ The Supreme Court in *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency* defined substantial evidence as "such evidence as a reasonable mind might accept as adequate to support a conclusion."²¹

In *Peppi v. Phyllis Wheatley Community Center*, the Court of Appeals reiterated that it reviews de novo the legal question of whether the applicant falls under one of the exceptions to ineligibility under Minn. Stat. § 268.095, subd. 1.²²

Argument for Ineligibility

An applicant who quits employment is ineligible for all unemployment benefits unless she falls under a statutory exception to ineligibility. Minnesota statutes render Werner eligible for unemployment benefits because Medical Professionals' decision to move its office to a distant location constituted a good reason to quit caused by the employer. The statute provides in pertinent part:

Subd. 1. **Quit.** An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:

(1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3;

* * *

Subd. 3. **Good reason caused by the employer defined.**

(a) A good reason caused by the employer for quitting is a reason:

(1) that is directly related to the employment and for which the employer is responsible;

(2) that is adverse to the worker; and

²⁰ *Id.* (citing Minn. Stat. §268.105, subd. 7(d)).

²¹ 644 N.W.2d 457, 466 (Minn. 2002).

²² 614 N.W. 2d 750, 752 (Minn. App. 2000).

(3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

* * *²³

In *Vargas v. Northwest Area Foundation*, the Court of Appeals, citing a number of statutory provisions, held that an individual's eligibility for unemployment benefits is determined based upon the available evidence without regard to any burden of proof.²⁴ As further clarified in *Lolling v. Midwest Patrol*, since Minnesota law does not assign a burden of proof to either party, an applicant cannot be found eligible for benefits simply because an employer does not fully participate in proceedings.²⁵ Here, the available evidence shows that Werner quit employment for a good reason caused by her employer, and is eligible for unemployment benefits.

1. An employer compels an average, reasonable worker to quit when it moves offices and increases the worker's commute from three-and-a-half to four-and-a-half hours.

As the Supreme Court held in *Ferguson v. Dept. of Employment Services*, “[i]n order to constitute good cause, the circumstances which compel the decision

²³ Minn. Stat. § 268.095, subs. 1 and 3 (2008).

²⁴ 673 N.W. 2d 200 (Minn. App. 2004).

²⁵ 545 N.W.2d 372, 376 (Minn. 1996).

to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances.”²⁶ As the statute notes, the conditions must be adverse to the worker, and the employer must be given notice and an ample amount of time to correct the problem. The statute also instructs the Department and this Court to apply the standard to the specific facts of Werner’s case.

Relator’s brief argues that there are two reasons that Werner’s decision to quit was objectively unreasonable: the employer moved only 17 miles away, and it moved within the metro area. Much of relator’s brief centers on the fact that the statute is objective, requiring the Department to consider only whether an average employee would quit when her employer’s office moves 17 miles away, and requiring the Department to disregard the effect of this move on Werner’s actual commute. It urges the Court to ignore the fact that the office move would add at least an hour, and likely more than an hour, to Werner’s commute, and effectively asks the Court to establish a new standard: that an employer who moves its office within the metro area never gives its employees a good reason to quit.

Relator’s proposed limits on the scope of the Department’s review is simply not supported by the language of the statute or by existing case law. It is true that this is an objective standard, and that there is no eggshell skull rule in the

²⁶ 247 N.W.2d 895, 896 (Minn. 1976) (quoting 81 C.J.S., Social Security and Public Welfare, §167).

unemployment insurance context. This reasonable person standard makes no accommodation for the supersensitive.²⁷ However, while the statute thus does not encompass purely personal preferences, neither does the statute exist in a vacuum. While the courts have properly had a general reluctance to find that an employee had good reason to quit when the reason was some immeasurable personal preference, it has conversely found good reason to quit when, under the unique factual circumstances of each case, the working conditions created a good reason to quit caused by the employer.

This Court has found such a good reason to quit exists in cases where the conditions have been tangible and measurable, including where the employer has lengthened the employee's working hours, has cut her pay, or has changed her shift times. This has necessarily required the Department and the Court to first look to the applicant's prior working conditions in order to establish a baseline. An applicant whose pay is cut by \$20,000 a year would likely not have a good reason to quit if she previously made \$200,000 a year, but would likely have a good reason to quit if she had made \$40,000 a year. Similarly, an employee who had purposefully accepted a job working only the night shift in order to provide childcare during the day might have a good reason to quit if she were moved to the day shift, while an employee who had previously worked the day shift but simply preferred to work during the night might not. There is no absolute Department

²⁷ See *Ferguson v. Dept. of Employment Services*, 247 N.W. 2d 895 (Minn. 1976); *Gonsior v. Alternative Staffing, Inc.*, 390 N.W. 2d 801 (Minn. App. 1986).

threshold at which the dollar amount of a salary cut, or the number of hours affected by a shift change, constitutes a good reason to quit caused by the employer. Instead, all such changes to working conditions are taken in the context of the employee's previous working conditions, which establish the baseline against which future changes can be compared.

Werner's employment with Medical Professionals establishes such a baseline. Werner lived in Good Thunder, a substantial drive from her employer's office in Bloomington. Nonetheless, Werner made the drive from rural southern Minnesota to her employer's office in the southern suburbs, a drive that – while lengthy – would take place largely on relatively uncongested rural highways. This drive took approximately three and a half hours a day, a figure that most would put at the extreme end of what could be considered a reasonable daily commute. Nonetheless, relator asks this Court to put its grasp of the real world aside, and divorce the conditions under which the applicant worked from the conditions under which she lived.

Relator asks this Court to ignore the fact that Werner already lived 85 miles away from her employer's office, and consider only the fact that Medical Professionals moved to an office 17 miles away. Relator's brief repeatedly reiterates that this move was only 17 miles away, inviting the reader to imagine a scenario in which the employee can drive a leisurely 17 miles from the door of her home to the door of her employer. This glosses over the rather obvious point that these 17 miles do not exist in a vacuum, and that this 17-mile span is not an

imaginary line in a geometry problem. In reality, Werner would have been required to first drive 85 miles in the morning, for over an hour and a half, before driving an additional 17 miles on 35W and 94E to her employer. Werner testified that this last stretch of her commute, on two extraordinarily congested roadways, would take 25 to 30 minutes each way. The Department thinks this is highly optimistic, given that rush hour traffic and poor weather can often drastically lengthen commuting time on these two roads. In any event, after driving for more than 2 hours to her place of employment, Werner would face the same trip on the way home. Her round-trip commute would have increased by at least an hour, from a baseline commute of three or three-and-a-half hours, a percentage increase of at least 25%, and likely much more.

Neither the Department nor the Court can ignore the fact that all employees live somewhere, and that the employer's decision to move its office would have a variable affect on employees residing in different locations. It is particularly important in cases such as this for the Department to take into consideration the employee's home address, where an employer's move could aid an employee just as easily as it could burden her. Relator's brief glosses over the fact that ignoring Werner's home addresses could have wielded an entirely different outcome, and one that could just as easily have been favorable to the employer. In the case at hand, Medical Professionals moved to the northwest, while Werner lived to the southeast. It was not the distance in sheer miles that made the commute untenable for Werner, but rather that it would drastically have increased her commute time.

There is no objective number at which Medical Professional's move would have been deemed reasonable, and it is impossible for the Department to declare that a 17-mile move would not constitute a good reason to quit, while an 80-mile move would. If Medical Professionals had moved 85 miles south, and established its offices across the street from Werner in Good Thunder, she would not have had a good reason to quit caused by the employer. 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. This would result in a standard that is both over- and under-inclusive, at times awarding benefits to those who are actually closer to the office after the employer's move, while denying benefits to those who are saddled with a much longer commute. The distance of the employer's move from one office to another cannot be divorced from the distance that the employer moves from the employee, and taking into account the locations of both the employer and the employee will not benefit either party more than the other.

While relator's brief cites a number of cases in an attempt to demonstrate that a 17-mile move does not constitute a good reason to quit, the brief overstates the holdings of most of these cases, and misapplies the rest. Relator's brief cites *Edward v. Sentinel Management Co.* for the proposition that a good personal reason to quit does not constitute a good reason to quit under the statute, ignoring the fact that in that case Edwards essentially quit in order to accept an early

retirement incentive.²⁸ The brief cites *Colglazier v. University of Minnesota*, claiming that it held that “quitting in part because new work location resulted in more difficult commute did not constitute good cause,” where Colglazier resigned for multiple reasons, including feeling like he was not being advanced with sufficient speed.²⁹ The case is silent as to whether, and by what amount, Colglazier’s commute time or distance increased.

Relator’s brief cites *Franssen v. Precision Design, Inc.* and *Preiss v. Commissioner of Economic Security* to show that commuting distances of 27 and 22 miles, respectively, were reasonable.³⁰ Both of those cases involved applicants who turned down prospective employment. In *Franssen* the door-to-door commuting distance was 27 miles total, and in *Preiss* the total commute would only have been 22 miles. These cases did not involve the addition of 22 or 27 miles to an already-lengthy commute; instead, they established that a total commute of less than 30 miles was not unreasonable for unemployed applicants, in rural areas, with limited job prospects. They are totally inapplicable to an applicant facing a commute more than three times as far.

Finally, relator mischaracterizes the holding in *Hahn v. Adecco USA Inc.* The case does not conclude simply that an employee who quit after her employer

²⁸ 611 N.W.2d 366 (Minn. App. 2000); relator’s brief, pp. 5, 7.

²⁹ 2008 WL 2885832, at *2 (Minn. App. July 29, 2008), relator’s brief p. 6, Appendix, A12-A13.

³⁰ Relator’s brief, p. 5; 2001 WL 766853, at *1-2 (Minn. App. July 10, 2001), Appendix, A14-A15; 347 N.W. 2d 74, 76 (Minn. App. 1994).

moved from one suburb to another was ineligible, as relator's brief argues.³¹ In *Hahn* the court took into account the location of Hahn's home and the new workplace, as well as Hahn's access to transportation, and concluded that she did not have good cause to decline an assignment where she had transportation and it was only 5 to 10 minutes farther away. Relator's brief ignores the fact that the Court properly took into account the location of the applicant's home, and further overlooked the court's holding that one of its recent decisions "can be read to indicate an emerging trend in the law to give greater consideration to an employee's inability to get to work because of lack of transportation."³²

There is also no merit to Medical Professionals' argument that a move within the metro area is per se not a good reason to quit caused by the employer. There is nothing magical about the metro area, particularly one that contains as many sprawling outer suburban rings as Minneapolis/St. Paul, and an employee could easily face a lengthy commute from one town to another. A company that moved its headquarters from Maple Grove to Cottage Grove could lengthen an employee's commute by an hour or two, if she lived Brooklyn Park, or shortened it by an hour or two, if she lived in Hastings. The Department cannot, and should not, ignore these realities. A move of 50 or 100 miles may harm some employees and benefit others, and the Department must look to the facts presented by each

³¹ Relator's brief, p. 7; 2009 WL 113375, at *2 (Minn. App. Jan. 20, 2009) Appendix, A10-A11.

³² *Id.*

unique applicant. The law does not contain any rigid brightline standards for a reason: it allows the Department and this Court to consider the facts in each case, and apply the law with common sense and a recognition of the different issues at play with each applicant.

Finally, the fact that Werner has chosen to live in rural Minnesota does not somehow make it more difficult for her to qualify for benefits. All workers live somewhere and commute to work every day, be it across the street or across the state. Arguing that Werner had an obligation to move closer to her employer would be like arguing that an employee who has just been given a 25% pay cut should tighten his belt and develop more frugal habits, and belabors the obvious point that an employee does not have an unmitigated obligation to adapt to changes in working conditions. An employee who has a mortgage and student loan payments and then has his pay cut by 25% has not lived recklessly or somehow removed himself from the reasonable worker standard by taking on debt. He has made financial decisions while receiving a certain salary, and the fact that he *could* have made financial decisions that would have allowed him to adapt to the pay cut does not transform itself into an *obligation* to do so.

Similarly, Werner certainly could have chosen to live closer to her employer's Bloomington office, but she had no obligation to do so. She accepted a position in Bloomington knowing that her commute would be lengthy but manageable. She had no further obligation to move north with her employer. There are certain things that employees must tolerate because there is no objective

manner by which to declare that one condition is worse than another. An employee who finds that his blue office has been painted green does not have good reason to quit, despite the fact that he prefers blue to green. An employee with a penchant for formality does not have a good reason to quit simply because he is not fond of the employer's move to a casual Friday dress code. These reasons are both trifling and immeasurable – no factfinder could determine whether one was better than the other. Other times an employee will quit because of purely personal issues, ranging from general unhappiness with the position to a quibble with a manager's style. These are also impossible to objectively measure, as many such differences distil to matters of personal preference and management style, none being better than another. Werner's situation was different. An office move to a distant location was objectively adverse to Werner, an adversity measurable by objective time and space, and it gave Werner a good reason to quit caused by the employer.

Finally, employees accept positions with certain understandings about what their work will entail, and where the work will be performed. Under Werner's employment agreement, she worked full-time in the Medical Professionals' Bloomington office. This is not a situation in which the employee moved, discovered her commute was untenable, and quit. Rather, it is a situation in which an employee took a job under a certain set of conditions, and then found those conditions changed. This Court has found that where an employer and an employee have an understanding of the employment agreement, a breach of that

agreement can create a good cause to quit. In *Baker v. Fanny Farmer Candy Shops No. 154*, an employee was hired with the understanding that she would only work day shifts.³³ When her employer began to schedule her for night shifts, Baker resigned, and the court concluded that she had good cause to do so in light of her employer's breach of the understood employment agreement.³⁴

2. The state of the economy has no bearing on the Department's decision.

Relator's brief implies that this Court should find Werner ineligible in part because no employee would quit a job in this economy. This is absurd. The statutory provision governing ineligibility for quitting does not contain any language suggesting that the Department should grant benefits more freely in good economies, and be miserly in times of recession. It is possible that relator's counsel is conflating the statutes concerning eligibility with the statutes concerning an individual's decision to refuse an offer of employment. In any event, relator's brief suggests that the court venture down a new and dangerous path, previously untried by any court. To the Department's knowledge, no state legislature or court, in Minnesota or elsewhere, has ever ordered an unemployment benefits department to consider economic indices or unemployment rates in determining whether the employee had a good reason to quit. This would be dangerous for two reasons, in addition to the obvious fact that the statute does not

³³ 394 N.W.2d 564, 566 (Minn. App. 1986).

³⁴ *Id.*

allow such a calculus. First, considering the economy would destroy the objective standard, since the standard would then vary from day to day or week to week for every applicant.

Second, it is dangerous because such analysis would also hold true during times of economic boom. Medical Professionals' actions were as likely to cause Werner to quit in 1999, when Minnesota's unemployment rate was around 3%, as they were in 2009, when the rate was much higher. The Department is neither more or less likely to hand out benefits during times of economic recession, and the economy does not render an employee's actions more or less reasonable. Indeed, during the 2009 session the legislature reiterated that the Department must continue to award benefits under the confines of the statutes, without influence from any outside circumstances. Minn. Stat. § 268.031, subd. 2, passed during a time of even greater economic duress, reiterates the remedial nature of the statute, and orders the Department to narrowly construe provisions concerning ineligibility.³⁵ The economy has nothing to do with the reasonableness of Werner's actions.

Finally, regardless of this Court's disposition, Sara Werner's benefit entitlement has vested, and the unemployment benefits paid to Werner are hers to keep. Under Minn. Stat. § 268.105, subd. 3a(c), she cannot be denied the benefits she has been paid.³⁶ The only question is whether the cost will be spread to all

³⁵ 2009 Laws, ch. 78, art. 4, § 1, subd. 2.

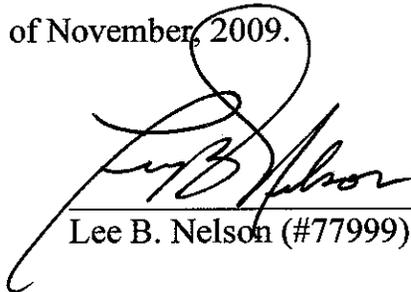
³⁶ 2009 Laws, ch. 78, art. 4, § 36, subd. 3a(c).

other employers, or whether Medical Professionals will pay a higher tax as a result of their responsibility for causing Werner to quit.

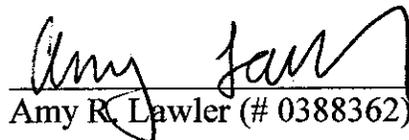
Conclusion

Unemployment Law Judge Bryan Eng correctly concluded that Werner quit employment for a good reason caused by her employer when she left her employment at Medical Professionals. The ULJ properly found that Werner is eligible for benefits, and the Department requests that the Court affirm the decision of the Unemployment Law Judge.

Dated this 9th day of November, 2009.



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