



No. A10-88

STATE OF MINNESOTA
IN COURT OF APPEALS

Tashika Sykes,
Relator

vs.

**RELATOR'S INFORMAL
MEMORANDUM**

Northwest Airlines, Inc.
Respondent,

and

Department of Employment & Economic
Respondent

Development,

RELATOR'S INFORMAL MEMORANDUM 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).

AGENCY DECISION

This matter is before the Court on a Petition for a writ of certiorari on a denial of unemployment benefits for Relator Tashika Sykes (Sykes). Sykes initial claim for benefits was denied because the Department of Employment and Economic Security (DEED) found that continuing suitable work was available. (Appendix -3). Sykes sought an administrative appeal. The Unemployment Law Judge Eila Savela, (ULJ) issued a decision on September 1, 2009 denying unemployment benefits on the grounds that Sykes did not quit her employment to accept new employment (Appendix 4). Sykes filed a request for reconsideration under Minn. Stat. §268.105, subd.2. On the Request for Reconsideration, the ULJ issued an order on December 15, 2009 confirming her initial order (Appendix -5). Sykes initiated review by this Court by filing a Petition for a Writ of Certiorari (Appendix- 1) and a Writ of Certiorari was issued on January 13, 2010 (Appendix -2).

FACTS

Sykes began working for Northwest Airlines (“Northwest”) on April 3, 1978 (Appendix - 5, hereinafter “T”, T-12). Sykes terminated her employment on March 31, 2009 to take a position at Green Cultural Communities (GCC) (T-19). Sykes began her employment with GCC just two days after termination of her position at Northwest. Her employment with GCC was terminated within two weeks of her hire, when GCC told Sykes that its funding did not come through and that it no longer had the funds to pay Sykes her salary (T-19).

At the time of termination of her employment with Northwest, Sykes made approximately \$60,000 per year on a salaried basis (T13). Northwest was offering employees an early-out program that allowed employees to leave with health benefits, among other benefits (T-13).

Sykes testified that she did not want to take the early-out package offered by Northwest unless she obtained a new job that would provide her an increase in her salary (T-15). Prior to quitting her job at Northwest, Sykes received a job offer from GCC that would pay her a salary of \$70,000 per year (T-17). The difference between the Northwest salary and the GCC salary equates to an increase in salary of over 16%. Sykes testified that the salary increase was a “big thing” for her (T-15). Sykes also testified that due to her health, she believed she was uninsurable; therefore Northwest’s agreement to continue her benefits was also very important to Sykes (T-15). Under the Northwest early-put program, Northwest would continue to provide Sykes her health insurance until at least the time she turned 62 (T-15). As Sykes was 53 at the time of the hearing, she was assured that if she took the early-out program, she would have health insurance for at least nine years through Northwest (T-15).

Sykes had received a letter from GCC that she would be hired (T-16). Based upon terms of the letter from GCC and the continuance of her benefits from Northwest, the GCC job was an attractive increase in the tangible compensation anticipated to be received by Sykes.

LEGAL ARGUMENT

THE ULJ ERRED AS A MATTER OF LAW IN FINDING THAT SYKES NEW EMPLOYMENT DID NOT PROVIDE SUBSTANTIALLY BETTER TERMS AND CONDITIONS OF EMPLOYMENT.

Whether Sykes was properly disqualified from the receipt of unemployment benefits is a question of law, which is reviewed de novo. *Scheeler v. Sartell Water Controls, Inc.*, 730 N.W.2d, 285 (Minn. App., 2007); *Markel v. City of Circle Pines*, 479 N.W.2d, 382, 384 (Minn. 1992). This Court may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the

relator may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) **unsupported by substantial evidence in view of the entire record as submitted**; or
- (6) arbitrary or capricious.

Minn. Stat. §268.105, subd. (7)(d) 2009. In this case, the ULJ's decision is not supported by the evidence in view of the entire record as submitted.

The ULJ found that Sykes was ineligible for unemployment benefits because she did not quit her employment to accept other employment that provided substantially better terms and conditions of employment. Minn. Stat. §68.095, subd.1(2) provides that an applicant who quit employment is ineligible for all unemployment benefits except when:

- (2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment;

In her original Findings of Fact and Decision the ULJ correctly found that Sykes would continue to receive medical insurance from Northwest unless Sykes received coverage from another employer. ((Appendix -4). In her decision on reconsideration, the ULJ stated that while the rate of pay at GCC was higher, Sykes would not have received health insurance GCC and that "health insurance benefits do constitute a factor that must be considered when evaluating the terms and conditions of employment" (Appendix -5). In this case, those benefits did not need to be considered, because Sykes continued to receive health benefits from Northwest. At worst, only

the difference in the cost of those benefits to Sykes, if any, should have been taken into account by the ULJ.

While we agree that benefits may need to be considered in comparing the financial benefits to an employee when quitting one job for another; the decision as to whether those benefits should result in a determination that the new job did not provide substantially better terms and conditions of employment should take into account the individual needs of the applicant. If an employee is offered a benefit that does not financially benefit an individual employee, it does not necessarily provide better terms and conditions. For example, if an employee has no children; child care benefits would not cause one position to be substantially better than another. Similarly, if an employee was able to be covered by health insurance through her spouse's employer; health benefits would not make one position substantially better than another. In this case, while Northwest health benefits may have been attractive, Sykes continued to be eligible for coverage under Northwest's plan. Therefore, the tangible 16.67% salary increase provided a substantial increase in benefits to Sykes and much better terms and conditions of employment.

Furthermore, the ULJ's determination of the difference in the cost of insurance benefits is not supported by any evidence in the record. Based upon the record, it is impossible to determine the financial figures that the ULJ used, if at all, in comparing Sykes Northwest and GCC positions to determine that the GCC position did not provide substantially better terms and conditions of employment. Although the ULJ asked Sykes how much Sykes would have to pay for the health insurance not provided by Northwest (T-22), the ULJ did not ask how much Sykes would have to pay to continue her benefits through Northwest under the terms of the early buy-out taken by Sykes. The ULJ appears to have reduced the financial benefits of Sykes's new job

by either the cost of insurance if Sykes would have had to seek health benefits other than through Northwest (\$1,000 per month), or (ii) the amount of the monthly premium that Sykes would have paid under the Northwest early-out program (free for 3 months, then \$400 per month). (T-22). Whatever the reduction was that was used by the TLJ, that reduction is not supported by the record.

There are no facts in evidence that the amount per month that Sykes would have to pay Northwest toward monthly premiums under the early-out program exceeded the amount that she would have had to pay Northwest if she had continued to be an employee of Northwest. It is usual for an employer to require employees to pay a portion of the cost of the employee's insurance, however, the record in this case does not state what Sykes paid Northwest for benefits while employed at Northwest. Thus, we should look only at the pay increase that GCC offered to Sykes.

A 16.67% is a substantial increase in terms and conditions of employment. In the unreported case of Yukich v. Furin & Shea Welding & Fabricating (No. A-05-558, Minn. Jan 3, 2006), the Minnesota Court of Appeals, in holding that an increase of 3.6 percent was not substantially better as a matter of law for eligibility for unemployment benefits, cited the decision in Sunstar Foods, Inc. v. Uhlendorf, 310 N.W.2d 80, 84 (Minn. 1981): "(addressing issue of whether employee had good cause for separation due to substantial adverse change in wages, noting that while fifteen percent decrease was substantial, two to four percent was not)." (A-7).

In this case, Sykes quit her employment for a position that provided a wage increase of over 16 percent in compensation. Sykes was able to continue her health benefits with Northwest. As a result, the cost of health benefits from a third party did not reduce the substantial increase in wages Sykes expected to receive from her employment with GCC. When

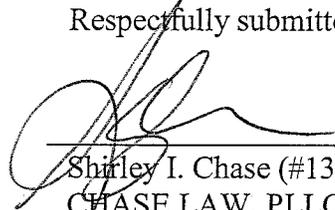
compared with the Northwest job, the GCC job provided substantially better terms and conditions of employment for an employee who already was covered for health benefits from a prior employer.

CONCLUSION

The ULJ's decision in this case is not supported by the record and the must be reversed. Sykes should be awarded unemployment benefits because she quit her position with Northwest to take a position that provided her with a sixteen percent increase in compensation.

Dated this 26th day of March, 2010

Respectfully submitted,



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