

No. A10-88

State of Minnesota
In Court of Appeals

TASHIKA SYKES,

Relator,

vs.

NORTHWEST AIRLINES INC,

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 unemployment benefits. One of those reasons is quitting for other covered employment with substantially better terms and conditions of employment. Tashika Sykes quit her employment with Northwest Airlines, Inc. (“Northwest”), because Northwest was offering a severance package and she had found a position that would pay a higher salary, although the new position did not offer health insurance. Did Sykes’ new position offer substantially better terms and conditions of employment?

The Unemployment Law Judge Eila Savela found that Sykes’ new position did not offer substantially better terms and conditions of employment, and therefore found that Sykes was ineligible for unemployment benefits.

Statement of the Case

This case involves whether Tashika Sykes is entitled to unemployment benefits. Sykes established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”). A Department adjudicator determined that Sykes was ineligible for benefits, because she chose to retire when continuing suitable work was available with her employer.¹ Sykes appealed that determination, and Unemployment Law Judge (“ULJ”) Richard Mandell determined that Sykes’ appeal was untimely and the appeal was

¹ E-1. Transcript references will be indicated “T.” Exhibits in the record will be “E-” with the number following.

dismissed.² Sykes filed a request for reconsideration with ULJ Mandell, who ordered an additional evidentiary hearing.³ ULJ Eila Savela held a de novo hearing. Northwest did not participate in the hearing. ULJ Savela held that Sykes quit her employment and that she did not fall under any statutory exception to ineligibility. She was therefore ineligible for benefits.⁴ Sykes filed a request for reconsideration with ULJ Savela, who issued an order affirming the initial decision.⁵

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Sykes under Minn. Stat. § 268.105, subd. 7(a) (2009) 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, and is the primary responding party in this case.⁶ Unemployment benefits are paid from state funds, and not employer funds.⁷ Minnesota law is clear that there is no presumption of eligibility

² Return-3 (Appendix, A12-A14).

³ Return-4 (Appendix, A9-A11).

⁴ Appendix to Department's Brief, A5-A8.

⁵ Appendix, A1-A4.

⁶ Minn. Stat. § 116J.401, subd. 1(18); Minn. Stat. § 268.105, subd. 7(e).

⁷ *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996), citing *Jackson v. Honeywell*, 47 N.W.2d 449 (Minn. 1951); Minn. Stat. § 268.069, subd. 2.

or ineligibility for unemployment benefits,⁸ and eligibility for benefits is decided using a preponderance of the evidence standard.⁹

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

Statement of Facts

Tashika Sykes worked for Northwest from April 3, 1978 through March 31, 2009.¹⁰ Her final position was as a customer care manager.¹¹ Sykes received a salary of \$60,000 per year.¹²

In January 2009, Northwest offered their employees a voluntary early-out program.¹³ The program allowed employees to remain on Northwest's health insurance program after their separation, provided they were not insured by another employer.¹⁴ Sykes accepted the early-out program.¹⁵ Northwest paid Sykes' health insurance premium in full for the first three months after her separation.¹⁶ Following that, Sykes was responsible for 50 percent of the premium, which cost about \$400 per month.¹⁷

⁸ Minn. Stat. § 268.069, subd. 2.

⁹ Minn. Stat. § 268.101, subd. 2(e); Minn. Stat. § 268.031, subd. 1.

¹⁰ T. 12, 19.

¹¹ T. 12.

¹² T. 13.

¹³ T. 13, 14.

¹⁴ T. 15.

¹⁵ T. 14.

¹⁶ T. 22.

¹⁷ T. 22.

While Sykes was working at Northwest, she volunteered for Green Cultural Communities (“GCC”).¹⁸ When she decided to leave Northwest, GCC offered Sykes a paid position as a business manager.¹⁹ The pay rate for the new position was \$50 per hour, which Sykes calculated would come to \$70,000 per year.²⁰ GCC did not offer health insurance to Sykes.²¹ Sykes worked for GCC from April 2, 2009 through April 10, 2009.²² At that point she was told that GCC had not received sufficient funding to pay her salary and her employment ended.²³

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 Sykes’ 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.²⁴

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

¹⁸ T. 16.

¹⁹ T. 16, 17.

²⁰ T. 17.

²¹ T. 21.

²² T. 18, 19.

²³ T. 19.

²⁴ Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2009).

determine.²⁵ 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,"²⁶ and gives deference to the ULJ's credibility determinations.²⁷ The Court also stated that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.²⁸ 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."²⁹

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. 1.³⁰

Argument for Ineligibility

An applicant who quits employment is ineligible for receiving unemployment benefits unless one of the nine enumerated exceptions applies. The 2008 statute, in effect at the time Sykes' eligibility was determined and thus controlling in this case, provides in pertinent part:

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

²⁵ *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).

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

²⁷ *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), review denied (Minn. Dec. 20, 2000)).

²⁸ *Id.* (citing Minn. Stat. §268.105, subd. 7(d)).

²⁹ 644 N.W.2d 457, 466 (Minn. 2002).

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

(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;

* * *³¹

The intent of this statutory exception to ineligibility is to extend benefits to those employees who take the entirely understandable step of quitting employment to accept substantially better employment, and then find themselves abruptly unemployed through no fault of their own. At the same time, though, the statute is narrowly crafted, in recognition of the fact that it would be extraordinarily easy to manipulate a system that grants benefits for quitting a job. As a result, this Court has made clear that the statute establishes an objective standard for whether a position offers substantially better terms and conditions of employment. This Court explained, in *McCoy v. County of Ramsey*, that “the statute contemplates a comparison of the terms and conditions of the positions in question, and not a comparison of which position is more suitable to the personal needs of an individual employee.”³²

In *McCoy* the Court found the relator ineligible for benefits because the new position was not objectively better than her old, and disregarded the relator’s arguments that the new position better met her “personal needs” by allowing her to

³¹ Minn. Stat. § 268.095, subd. 1 (2008).

³² 2007 WL 1248136, at *2 (Minn. App. 2007), Appendix. A19-A21.

be more accessible to her children.³³ Thus, the fact that the new position paid less, did not offer health care benefits, and was non-union, showed that the new position was not objectively substantially better than the old, notwithstanding the fact that the family was covered under another health insurance policy, and that the new position offered McCoy the chance to spend more time with her children.³⁴

Similarly, in *Welshons v. Superior Truck Auto and Marine Inc.*, the court found that an applicant's new position did not offer substantially better terms or conditions of employment when it paid \$3 an hour less than his old position, despite the fact that it offered a shorter commute, more modern working conditions, and an opportunity to earn commissions.³⁵ These objective standards set the bar high. They also prevent employees from manipulating the unemployment insurance program by accepting objectively lesser positions of employment that they suspect, for whatever reason, will not last.

Sykes does not meet this objective standard. She took a position with GCC that she knew was insecure. Sykes had volunteered with GCC and was going to be their business manager. She should have been aware that GCC's funding was precarious and that her full-time paid position with GCC was not likely to last. Sykes testified that she had "a fall-back plan of working for the district, the school

³³ *Id.*

³⁴ *Id.* at 1-2.

³⁵ 2008 WL 2104454, at *2 (Minn. App. May 20, 2008), Appendix, A15-A18.

district if the Green Cultural Communities didn't pan out."³⁶ Sykes cannot be considered to have left her employment with Northwest to accept substantially better employment when she suspected that her new employment would not last.

Sykes argues that health insurance benefits do not need to be considered because she was able to continue receiving benefits from Northwest.³⁷ Sykes states in her brief, "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*."³⁸ (emphasis added) This is a misapplication of the law. As the above-cited cases illustrate, the standard is objective, which means the terms and conditions of each job are evaluated without regard for the applicant's personal circumstances.

As Sykes points out in her brief, the record is silent as to how much Sykes contributed toward her monthly insurance premium while employed with Northwest. Sykes argues that because of this, the Court should only consider the difference in the rate of pay between Northwest and GCC.³⁹ This is incorrect. Northwest did pay a portion of Sykes' insurance premium. GCC made no contribution toward an insurance premium for Sykes. Sykes testified that if she were to have purchased an individual plan, her premium would have been \$1000

³⁶ T. 21.

³⁷ Relator's brief.

³⁸ Relator's brief, p. 5.

³⁹ Relator's brief, p. 6.

per month.⁴⁰ Aside from the cost of the premium, there are many benefits to being covered under an employer's group health insurance plan instead of purchasing an individual plan. Group health insurance is a valuable benefit that must be considered when comparing the terms and conditions of employment.

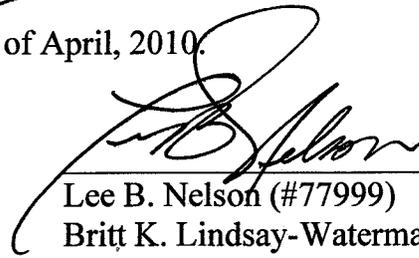
What the record shows was that Sykes left her position at Northwest for a position at GCC that was in some ways slightly better, and in some ways slightly worse, than the one she was leaving. In terms of objective comparison, the position at GCC paid more but did not offer health benefits, and was for an employer that had not yet secured funding for Sykes' salary at the time that Sykes accepted the position. Although Sykes had health insurance through her severance package with Northwest, this did not make the position with GCC objectively superior, and does not show that the terms or conditions of the new employment were substantially better.

Conclusion

Unemployment Law Judge Eila Savela correctly concluded that Sykes quit employment to accept a new position that did not offer substantially better terms or conditions of employment. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

⁴⁰ T. 22.

Dated this 27th day of April, 2010.



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