STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2465

Nadene Lynch,
Relator,

vs.

Wal-Mart Associates Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed January 22, 2008
Reversed
Shumaker, Judge

Department of Employment and Economic Development
File No. 12624 06

Nadene K. Lynch, 20111 Madison Way N.E., Cedar, MN 55011-9581 (pro se relator)

Wal-Mart Associates Inc., c/o Talx UCM Services Inc., P.O. Box 283, St. Louis, MO, 63166-0283 (respondent-employer)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (respondent-department)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

On writ of certiorari, relator challenges an unemployment law judge's decision that relator was properly disqualified from receiving unemployment benefits. Relator argues that she is entitled to unemployment benefits because she had good reason caused by her employer to quit. Because relator's employer offered termination with severance pay and altered every component of relator's employment, all to her disadvantage, we reverse.

FACTS

Relator Nadene K. Lynch began working for respondent Wal-Mart on November 27, 1995. By May 2006, Lynch was a cash office supervisor earning $16.41 per hour. She worked Monday through Friday, from 6:00 a.m. to 2:30 p.m., and her responsibilities included supervising five other cash office associates, interviewing applicants, training associates, and assisting with payroll.

On May 22 or 23, 2006, Wal-Mart store manager Tony Reed told Lynch that the company would eliminate her position. Every cash office supervisor in the company was offered the option of a different position or severance pay. Reed offered Lynch a cash office associate position, which would require her to work Sunday through Thursday, from 5:00 a.m. to 2:00 p.m. Lynch would no longer have supervisory responsibilities and would be expected to work alongside the associates she formerly managed. According to Lynch, Reed told her that her pay would decrease by $1.80 per hour. Reed recalls telling

Lynch that her pay would decrease by only $.80 per hour, because there was a $.40 per hour difference in pay grades, and Lynch's pay would decrease by two grades.

Lynch was concerned that working Sundays and beginning her shift an hour earlier would negatively impact her family. Reed told Lynch that if she had a specific need or family function that required her to take a Sunday off, Reed would "certainly" give her the day off, but he could not guarantee her a Monday-through-Friday schedule.

Reed told Lynch she had three days to decide whether to take the associate position or accept a severance payment. Lynch later contacted Wal-Mart's corporate office and was assured that she had four weeks to make her decision. On May 30, 2006, however, Reed told Lynch she had until the end of the day to decide. Lynch refused the associate position and opted for ten weeks of severance pay totaling $5,874.78. Her last day of employment was June 23, 2006.

On September 8, 2006, the Minnesota Department of Employment and Economic Development (DEED) disqualified Lynch from receiving unemployment benefits from the Minnesota Unemployment Insurance Program. The public purpose of the program is to "provid[e] workers who are unemployed through no fault of their own a temporary partial wage replacement" to assist them in finding new employment. Minn. Stat. § 268.03, subd. 1 (2006). An applicant for unemployment insurance who quit her employment is disqualified from all benefits unless she quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2006). A good reason "is directly related to the employment and for which the employer is responsible," "is adverse to the worker," and "would compel an average, reasonable worker to quit and

become unemployed rather than remaining in the employment." *Id.*, subd. 3(1)-(3). DEED found that Lynch's reasons for quitting her employment were "not substantial enough to compel the average worker to quit without first finding other employment."

Lynch appealed. On October 3, 2006, an unemployment law judge (ULJ) held a telephone hearing and heard testimony from Lynch and Reed. Lynch also submitted a copy of Wal-Mart's severance policy, which provides that an employee is ineligible for severance pay if she refuses to transfer to a comparable position. She argued that if Wal-Mart had considered the associate position comparable to her supervisor position, it would not have offered severance pay if she refused the offer.

The ULJ decided that Lynch was properly disqualified from receiving unemployment benefits because she "has not shown that she had good reason caused by Wal-Mart to quit." The ULJ found Reed's testimony that Lynch's hourly wage would decrease by $.80 and not by $1.80 "more persuasive" because "Reed explained how the wage reduction was calculated [and] Lynch did not argue." The ULJ concluded that the "reduction in wages, the small change in responsibility, hours, and required workdays, would not be enough to motivate the average employee to chose the uncertainties of unemployment over continued employment under the new terms." The ULJ did not address Lynch's argument regarding Wal-Mart's severance policy.

Lynch requested that the ULJ reconsider his decision. She claimed that she did not argue with Reed's testimony regarding her pay decrease "because I thought that you were just asking him for his statement." She stressed that losing her supervisory responsibilities was a significant factor in her decision to leave, and reiterated her

argument that Wal-Mart itself did not consider the offered position comparable to her former job.

On December 7, 2006, the ULJ affirmed his decision as "factually and legally correct." Lynch timely petitioned for certiorari review of the ULJ's decision to disqualify under Minn. Stat. § 268.105, subd. 7(a) (2006).

D E C I S I O N

I.

"Whether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law, which this court reviews de novo." *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). Disqualification, although a legal conclusion, "must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). This court may reverse or modify a ULJ's decision if the employee's substantial rights have been prejudiced because the ULJ's findings, inferences, conclusion, or decision are affected by error of law, unsupported by substantial evidence, or are arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2006). "[W]e will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

II.

Lynch first argues that she had good reason to quit because Wal-Mart eliminated her position and failed to offer a comparable transfer. We agree. Wal-Mart's Severance Policy states that "[a]n Associate who refuses an offered transfer to a position with

comparable pay, hours, responsibilities, etc. in the same or different facility . . . during a reduction in force, [or] an organizational change . . . will nullify his/her eligibility for Severance Pay." Wal-Mart offered Lynch a choice between the cash office associate position and severance pay. No evidence in the record explains how this offer could possibly be consistent with the severance policy if the positions were comparable. We thus view Wal-Mart's offer as its admission that the associate position was a sufficiently significant alteration in job duties and benefits that an employee might choose to quit rather than accept the new position.

III.

Lynch next argues that she has good reason to quit because "[t]he reduction in pay, weekend workdays, and earlier shift would be adverse to my personal and family life." She also asserts that the associate position was a demotion because she would lose her supervisory duties and would "be required to work directly with the people I was previously supervising."

"The circumstances which compel the decision 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." *Wood v. Menard, Inc.*, 490 N.W.2d 441, 443 (Minn. App. 1992) (quoting *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 n.5 (1976)). The question is whether "[t]he average, reasonable person, when faced with a similar choice, would have chosen to remain employed." *Dachel v. Ortho Met, Inc.*, 528 N.W.2d 268, 271 (Minn. App. 1995). When we consider that every aspect of Lynch's job was altered—her wage, her

hours, her days, her duties, and her status—we are compelled to conclude that she would have suffered a significant disadvantage in accepting the new job and that a reasonable person in her position would have chosen to quit.

In the cash office associate position, Lynch would be required to work the same number of hours but at two pay-grades below her current hourly wage. The ULJ's finding that Reed's testimony regarding Lynch's hourly wage decrease was more credible is consistent with the statutory requirement that the ULJ "set out the reason for crediting or discrediting [significant] testimony." Minn. Stat. § 268.105, subd. 1(c) (2006); *see also Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (concluding that the ULJ's credibility findings are supported by substantial evidence when based on "the way in which [the witness] learned the facts and the manner in which she described them" in her testimony). Subtracting $.80 from Lynch's hourly wage amounts to a nearly 5% decrease. This reduction alone is not a sufficiently good reason to quit. *Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn. 1981) (stating that less than 15% pay reduction was not a good reason to quit); *cf. Dachel*, 528 N.W.2d at 270 (stating that a 10% pay reduction was not good reason to quit). But our analysis does not end here.

Lynch would also be required to work Sunday through Thursday beginning at 5 a.m. This new schedule is at odds with her husband's work and children's school schedules, and she claims that she would miss numerous family events and activities. This court has previously held that a pay decrease combined with changed hours provides substantial reason to quit. *See Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418-19

(Minn. App. 2003) (concluding that Rootes had good reason to quit where the offered position involved a $1.75 hourly wage reduction and a different weekly shift that included weekends).

We also agree with Lynch's characterization of the associate position as a demotion. "Receiving a demotion can be a substantial change in employment justifying separation." *Wood*, 490 N.W.2d at 444. An employee has the right to reject a position "which requires substantially less skill than she possesses." *Marty v. Digital Equip. Corp.*, 345 N.W.2d 773, 775 (Minn. 1984). The court in *Marty*, for example, determined that an employee had good reason to reject a new sales position that involved substantially different duties from her current personnel position and that limited her advancement opportunities and potential maximum salary. *Id*. Here, Lynch would lose her supervisory role. Wal-Mart argues that "[t]he mere fact that the position has the title of supervisor does not mean that the position had any specific responsibilities." This argument appears disingenuous. Even if Lynch's daily duties in the new position approximate those in her old position, and they do not seem to do so, Lynch is clearly taking a step down by working as an equal in status with those associates she used to supervise.

In sum, the evidence shows that Wal-Mart offered Lynch a position that significantly altered her pay, schedule, and responsibilities, and it admitted as such when it offered to pay her severance if she did not transfer. The combined effect of Wal-Mart's actions was adverse to Lynch and would compel the average person in Lynch's position

to quit. We conclude that the ULJ's decision is not supported by the record, and that Lynch is entitled to state unemployment benefits.

Reversed.