STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0291

Ann R. Majerus,
Relator,

vs.

Spartannash Associates, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 11, 2017
Affirmed
Larkin, Judge

Department of Employment and Economic Development
File No. 34996674-3

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Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

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

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she quit her employment. Relator argues that respondent Department of Employment and Economic Development (DEED) is collaterally estopped from denying her benefits because it previously determined that she was eligible for benefits. Relator also argues that she quit for a good reason caused by her employer. We affirm.

FACTS

Relator Ann Majerus challenges a ULJ's determination that she is ineligible for unemployment benefits. The factual record was developed at an evidentiary hearing before the ULJ. It establishes that relator began employment with Spartannash Associates, LLC, d/b/a Econo Foods ("SpartanNash") on June 25, 2015, as a panner in the bakery. Majerus was hired to work part time. SpartanNash informed Majerus that she could work up to 30 hours per week, but it did not guarantee her any particular number of hours. Instead, SpartanNash informed Majerus the number of available hours would depend on sales. Majerus worked an average of 28.2 hours per week during her 11 weeks of employment with SpartanNash. Majerus's weekly hours varied during her employment, ranging from a low of 21.04 hours per week to a high of 37.20 hours per week.

On September 17, the bakery supervisor told Majerus that she was only scheduled to work ten hours for the upcoming week. Later that day, Majerus approached the store's director, Jeff Kes, and explained that she wanted more hours in either the deli or another

department in the grocery store. Although the parties agree that this conversation took place, they disagree regarding Kes's response to Majerus's request for additional hours. Majerus testified that Kes said "I can't do that," whereas Kes testified that he said, "I can't do that for next week, the schedules are done." The parties agree that when Majerus was hired, there was an understanding that she could pick up more hours in other departments of the store.

Two days later, Majerus attempted to locate Kes to see if she could convince him to give her more hours. Kes was not at the store, but Majerus spoke to the store's assistant manager who suggested that she write a letter explaining her grievances regarding the reduction in her hours and her desire to work in other departments in the store. Although the letter was not entirely clear regarding whether Majerus was resigning, both Majerus and Kes understood the letter to be Majerus's resignation letter.

Majerus applied for unemployment benefits, and DEED issued a determination of eligibility in October 2015. SpartanNash did not challenge the determination of eligibility, and Majerus received unemployment benefits during the following year. We now know that DEED failed to notify SpartanNash of the eligibility determination. Instead of providing notice to SpartanNash, DEED provided notice to a company that was ultimately acquired by SpartanNash, but that had not been in existence since 2011.

In October 2016, Majerus reapplied for unemployment benefits, but this time, DEED issued a determination of ineligibility. Majerus appealed this determination, and her appeal was heard by a ULJ. On November 14, the ULJ denied Majerus's second application for unemployment benefits and found that an overpayment of $3,036 resulted

from the October 2015 eligibility determination. The ULJ determined that "Majerus quit [her] employment because her hours were reduced," which was not good cause to quit because "Majerus was hired for a casual, part-time position, and she was not guaranteed any number of work hours."

The ULJ denied Majerus's request for reconsideration and affirmed her decision. This certiorari appeal follows.

D E C I S I O N

Majerus challenges the ULJ's determination that she is ineligible for unemployment benefits.[1] This court may modify, reverse, or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the findings or decision were affected by an error of law or "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017).

I.

Majerus asserts, for the first time on appeal, that DEED should be collaterally estopped from determining that she is ineligible for unemployment benefits, based on its prior eligibility determination. This court generally will not consider issues that were not presented to the ULJ. *See Peterson v. Ne. Bank – Mpls.*, 805 N.W.2d 878, 883 (Minn. App. 2011) ("[if] the issue was not raised before the ULJ, [then] it is not properly before this court"). DEED opposes consideration of the collateral-estoppel issue for this reason. And SpartanNash argues the factual record is inadequate to determine the issue. We agree that

[1] Majerus does not separately challenge the ULJ's overpayment determination.

the collateral-estoppel issue is not properly before this court and that the factual record is not adequately developed regarding this issue. We nevertheless address the issue briefly, only because we question whether the doctrine of collateral estoppel can ever apply to an initial eligibility determination.

The following factors must be met for collateral estoppel to apply to an agency decision:

> (1) the issue to be precluded must be identical to the issue raised in the prior agency adjudication; (2) the issue must have been necessary to the agency adjudication and properly before the agency; (3) the agency determination must be a *final adjudication subject to judicial review*; (4) the estopped party was a party or in privity with a party to the prior agency determination; (5) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Graham v. Special Sch. Dist. No. 1, 472 N.W.2d 114, 116 (Minn. 1991) (emphasis added) (citations omitted). The party asserting collateral estoppel must establish each of these elements. *Id.* We question whether Majerus can meet this burden because DEED's initial eligibility determination was not a "final adjudication subject to judicial review."

For an unemployment-benefits determination to be "subject to judicial review," several things must occur. First, an employee must apply for unemployment benefits. Minn. Stat. § 268.101, subd. 1(a) (2016). Second, DEED must make an initial eligibility determination. *Id.*, subd. 2 (Supp. 2017). Third, if the initial determination is challenged by either the employer or employee, a hearing must be held before a ULJ. Minn. Stat. § 268.105, subd. 1(a) (2016). Fourth, any party that wishes to challenge the ULJ's decision from the hearing must request reconsideration of the decision. *Id.*, subd. 2 (Supp. 2017).

After all these steps are taken, "[t]he Minnesota Court of Appeals must, by writ of certiorari to the department, review the [ULJ's] decision on reconsideration." *Id.*, subd. 7 (Supp. 2017).

In sum, judicial review is only available for a ULJ's decision on reconsideration, and not for an initial eligibility determination. Because an initial eligibility determination is not a "final adjudication subject to judicial review," it would seem that collateral estoppel does not apply to an initial eligibility determination as a matter of law. However, we leave a determination regarding this legal issue for another day, when the issue is properly before us.

II.

Majerus contends that the ULJ erred by determining that she is ineligible for unemployment benefits because she quit her employment. An employee who quits employment is generally not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2017). But there are exceptions to this rule and, as is relevant here, an employee may be eligible if the employee quit because of a "good reason caused by the employer." *Id.* A good reason caused by the employer is defined as 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 (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3 (Supp. 2017).

"[W]hether an employee had good reason to quit is a question of law reviewed de novo." *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

We review the ULJ's relevant findings of fact "in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotation omitted).

It is undisputed that Majerus quit her employment with SpartanNash. Majerus argues that she had good reason to quit because "reducing her hours from 28.2 hours per week on average to 10 hours per week . . . was both a substantial hour and wage reduction." She relies on caselaw holding that a substantial wage or hour reduction can provide good reason to quit. Specifically, she relies on *Thao v. Command Ctr., Inc.*, 824 N.W.2d 1 (Minn. App. 2012); *Sunstar Foods Inc. v. Uhlendorf*, 310 N.W.2d 80 (Minn. 1981); *Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 235 N.W.2d 616 (1975); and *Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715 (Minn. App. 2012). For the reasons that follow, this reliance is misplaced.

In *Thao*, the main issue was whether an employee had to complain to her supervisor about an hour reduction before quitting employment to satisfy the good-cause exception under Minn. Stat. § 268.095 (2010). 824 N.W.2d at 4. We ultimately held that, because a drastic reduction of an employee's hours was not an adverse "condition" of employment that triggered the requirement to complain to a supervisor, an employee is not required to complain before quitting based on a reduction in hours. *Id.* at 11. We did not decide whether Thao had good cause to quit. *Id.* Instead, we reversed and remanded for a determination whether the reduction of hours was "actually adverse to [Thao], and, if so, whether those actions would have caused an average, reasonable employee to quit rather

than remain in employment." *Id.* In sum, *Thao* does not support Majerus's argument that she suffered a reduction of hours that provided good reason to quit.

In the next two cases on which Majerus relies, the supreme court concluded that employees had good cause to quit based on reductions in pay. *See Sunstar Foods*, 310 N.W.2d at 85; *see also Scott*, 306 Minn. at 536, 235 N.W.2d at 617. However, in each case, there was a reduction of wages to which the employer had originally agreed. Specifically, in *Sunstar Foods*, the employer unilaterally adopted a new labor contract for its unionized employees that reduced their wages by $2.23 per hour, resulting in a 21-26% pay reduction. 310 N.W.2d at 82. Similarly, in *Scott*, the employer changed an employee's compensation structure from a fixed salary to a commission-based wage-determination method, which the commissioner of employment services found would have resulted in a 25% wage cut. 306 Minn. at 535, 235 N.W.2d at 616.

The circumstances here are not comparable to those in *Sunstar Foods* and *Scott*. SpartanNash did not reduce Majerus's wages. Moreover, SpartanNash told Majerus, at the time of hiring, that it would provide her with up to 30 hours of employment per week, without specifying a minimum number of hours. At oral argument before this court, counsel for Majerus agreed that SpartanNash did not promise her a particular number of weekly hours. Majerus argues that it does not matter that SpartanNash did not breach a contractual obligation or break a promise, because SpartanNash provided her an average of 28 hours per week and then reduced her hours to ten hours.

Majerus seems to rely on *Haugen* as support for her argument. Haugen was hired to work 28 hours per week to manage 16 rental houses. *Haugen*, 819 N.W.2d at 717.

"Almost immediately," Haugen's employer made him responsible for an additional 18-unit apartment building, which necessitated that his hours increase to 40 hours per week. *Id.* Haugen worked 40 hours per week for over two years. *Id.* His employer then reduced his hours, first to 32 hours per week and then to 24 hours per week. *Id.* In concluding that the reduction from 40 to 24 was "substantial enough to constitute a good reason to quit," we rejected the employer's argument that "the reduction to 24 hours was not substantial because Haugen was originally hired on a part-time basis at 28 hours." *Id.* at 723. We reasoned that because Haugen's duties had been increased and he worked "40 hours per week for more than two years, . . . [t]he ULJ appropriately refused to measure the significance of the reduction of the original 28-hour arrangement." *Id.*

Haugen is distinguishable. SpartanNash never increased Majerus's responsibilities, necessitating an increase in her weekly hours. Moreover, Majerus's weekly hours were consistent with the number of hours SpartanNash told her she would receive when it hired her. And Majerus left her employment after only 11 weeks. Unlike the circumstances in *Haugen*, Majerus's responsibilities, hours, and resulting pay never changed from the beginning to the end of her employment. Moreover, Majerus's 11 weeks of part-time employment with SpartanNash is not comparable to the two years of full-time employment in *Haugen*.

In sum, although the caselaw on which Majerus relies held that substantial reductions in hours and wages provided good reasons to quit, those reasons resulted from a reduction in the hours or wages that each employee reasonably expected. The situation here is not comparable. SpartanNash hired Majerus to work up to 30 hours per week and

did not promise her any particular number of hours. Majerus could not have reasonably developed an expectation of a guaranteed number of weekly hours after only 11 weeks of employment. These circumstances do not establish a reduction in hours or wages that constitutes good cause to quit under the caselaw discussed above.

We also conclude that the hour reduction for the week of September 22 would not cause an "average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(3). The reasonable-person standard considers the conduct of an ordinary, prudent person, and it is an objective standard. *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010). An average, reasonable person who agreed to accept a part-time job providing up to 30 hours of employment per week, knowing that the number of weekly hours was not guaranteed, would not be compelled to quit the first time she received less hours than she would have liked. We have no doubt that the reduction of hours caused a financial hardship for Majerus. And we appreciate Majerus's desire to work more hours. But we cannot conclude that a reasonable person would have quit her job and become unemployed the first time her weekly hours were less than she desired when her employer never guaranteed a particular number of hours in the first place.

Because Majerus did not quit her employment based on a good reason caused by SpartanNash, we affirm the ULJ's ineligibility determination.

Affirmed.