STATE OF MINNESOTA
IN COURT OF APPEALS
A10-805

Rachel Gupta,
Relator,

vs.

Dungarvin Minnesota, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 29, 2011
Reversed
Shumaker, Judge

Department of Employment and Economic Development
File No. 23134638-3

Rachel S. Gupta, Big Lake, Minnesota (pro se relator)

Dungarvin Minnesota, LLC, St. Paul, Minnesota (respondent employer)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

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

SHUMAKER, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she quit employment without a good reason caused by her employer, making her ineligible for unemployment benefits. We reverse.

FACTS

In June of 2009, relator Rachel Gupta's employer, Dungarvin Minnesota, LLC, told her it was eliminating her position as a live-in counselor at the Raymond group home, one of the group homes it operates, because of "program changes within the company." Dungarvin offered Gupta employment at Fair Place, another Dungarvin group home in the area. Her job responsibilities and wages would be the same, but she was told of several drawbacks to the new position. She lived at the Raymond home (as was required of live-in counselors) with her husband and two-year-old son, but she would lose several amenities upon moving to Fair Place. For instance, the Raymond home had two bedrooms; Fair Place had only one. The Raymond home gave live-in counselors use of their own kitchen; Fair Place's kitchen was to be shared by Gupta's family and her clients. The Raymond home had a dining room; Fair Place did not. The Raymond home had a bathtub for Gupta's child; Fair Place had only a shower. The Raymond home's live-in area was about 1,050 square feet in size; Fair Place's is 497 square feet. Despite these drawbacks, Gupta accepted this employment.

After accepting employment, Gupta realized that the new position had several additional significant drawbacks. First, because of the city's parking restrictions, the

family could park only one car at Fair Place during the winter months. This was a problem because, as a condition of their employment, Gupta and her husband, also a Dungarvin employee, were required to have access to their own vehicles at all times for their work with Dungarvin. Second, Gupta was told that her husband would not be allowed to fill in for her when she needed someone to cover her shifts, as he had been able to do at the Raymond home. Gupta was expecting her second child and had anticipated relying upon her husband to cover any shifts she missed in caring for her newborn. It appears that Dungarvin later wrote a letter to Gupta expressing its willingness to allow Gupta's husband to fill in for her at Fair Place, but the ULJ did not allow the letter into evidence, and it is not part of the record on appeal.

When Gupta stated her concerns to her supervisor, Marybeth Bruflodt, about the disadvantages to the new job, Bruflodt told her that nothing could be done about them. Gupta then contacted Bruflodt's supervisor, Ric Nelson, who told her that "no concessions" would be made. Gupta eventually filed a grievance with a Dungarvin senior director, evidence of which the ULJ excluded. Dungarvin then offered Gupta a position that had opened up at Roseview, another Dungarvin group home. This position would have required Gupta to work in the evenings, when her husband also worked, and to place her toddler and the second child she was expecting into suitable evening daycare. Dungarvin gave her only one day to accept or to refuse this job offer. Stating that one day was not sufficient time for her to find suitable daycare, she declined the offer. Gupta then left her employment with Dungarvin, and she and her family were given three days to move out of the Raymond home.

Gupta applied for unemployment benefits with the Department of Employment and Economic Development (DEED), which determined that she was ineligible because she had quit her employment. Gupta appealed the determination and requested a hearing before a ULJ. The ULJ concluded that Gupta quit her employment without a good reason caused by her employer, and ruled that the average, reasonable employee would not have quit employment for the reasons Gupta cited. Gupta filed a request for reconsideration. The ULJ affirmed on reconsideration, and this certiorari appeal followed.

D E C I S I O N

Standard of Review

We may reverse or modify the ULJ's decision if it is affected by error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2010). We review questions of law de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). An applicant who quits her employment is ineligible for unemployment benefits except when "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (Supp. 2009). 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
> (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Id., subd. 3(a) (2008). If subject to adverse working conditions, the applicant must complain of these to the employer and give the employer reasonable opportunity to correct them before they can be considered good reason to quit. *Id.*, subd. 3(c) (2008).

Quit for Good Reason Caused by Employer

The ULJ concluded that an average, reasonable employee would not have quit in Gupta's circumstances. In order to constitute good cause, the court considers "whether the employee's reason for quitting was compelling, whether it was real and not imaginary, substantial and not trifling, reasonable and not whimsical or capricious." *Ferguson v. Dep't of Emp't. Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 (1976). "The correct standard for determining whether relator's concerns were reasonable is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006).

Gupta's employment with Dungarvin was conditioned on three significant requirements: (1) that she live at the house to which she was assigned; (2) that she have unfettered access to a vehicle for transporting clients; and (3) that, whenever she took time off, she was to find someone to cover her shifts. Her employment at the Raymond home also provided amenities that corresponded to these requirements. The house afforded suitable living conditions for her and her family. She had a place to park her car so that it was reasonably accessible whenever she needed it for work-related purposes. And when she took time off her husband was able to cover her shifts.

The employment at Fair Place altered all three corresponding amenities and created a new problem in that her husband also needed to have ready access to his car for his employment and they could not both park at their house. Still, Gupta was willing to stay in Dungarvin's employ but she complained about the changes. When Gupta was offered a transfer to Roseview, with still further alteration of the amenities, she remained willing to retain her employment. But, because she had to find daycare for her child and the baby she was expecting, something she did not need previously, she needed more than one day to find suitable daycare. The evidence shows that she did not reject the transfer to Roseview but rather wanted sufficient time to find daycare so that she could continue her employment. When Dungarvin stated that she had to accept or decline the offer within one day, she quit, concluding that she had no other choice.

All the employment changes were attributable entirely to Dungarvin; all were adverse to Gupta; and all affected her ability to perform her job. Nevertheless, Gupta was willing to accept the adverse changes, but she wanted to be sure that she could find daycare that had not been previously necessary. Under all the circumstances, faced with the requirement that she decide to accept or reject continued employment with Dungarvin in one day, Gupta contended that she felt compelled to quit.

The ULJ held that "the inquiry is not whether an employee with a family of four would quit, but rather whether an average, reasonable employee would quit." There is no "average, reasonable employee" in the abstract. All employees come to and remain in their employment within particular circumstances. To measure Gupta's situation against some hypothetical employee without family obligations is to create a false standard that

can be manipulated to defeat claims for unemployment benefits. The question is whether the reasonable, average employee in the employment circumstances of the individual employee would be compelled to quit because of the employer's actions. To compel is "[t]o cause or bring about by force, threats, or *overwhelming pressure*." *Black's Law Dictionary* 321 (9th ed. 2009) (emphasis added). As the supreme court explained, "there must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson*, 311 Minn. at 44 n.5, 247 N.W.2d at 900 n.5.

There can be no doubt that employers are entitled to make business decisions to advance their interests and to foster their enterprise economically and otherwise, even if those legitimate decisions might adversely affect employees. Furthermore, the hypersensitive employee, or the employee with singularly anomalous circumstances, is not entitled to penalize an employer for legitimate business decisions by quitting employment and subjecting the employer to liability for unemployment compensation. *See id.*

Most often, legitimate business decisions will not compel average, reasonable employees to quit. But sometimes cumulative adverse impacts coupled with an ultimatum that an employee make an immediate choice to accept those impacts or leave will compel even the reasonable, average employee to quit. This is the situation Gupta faced.

No single adverse alteration of Gupta's employment conditions would reasonably compel her to quit, even if such a change was adverse to her. And, in fact, she did not quit because of any one change. She did not quit even because of several adverse

changes. The reasonable inference is that she did not choose to quit at all until, considering all adverse circumstances together, and faced with having to immediately choose to continue employment despite the uncertainty of finding suitable daycare, she made a reasonable decision, one that we hold the average employee in similar circumstances would have made.

Employee Must Complain

The ULJ also concluded that Gupta did not act as an average, reasonable employee because she did not complain to Dungarvin and give Dungarvin an opportunity to correct the situation. An employee 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." Minn. Stat. § 268.095, subd. 3(c); *see also Burtman v. Dealers Disc. Supply*, 347 N.W.2d 292, 294 (Minn. App. 1984) (holding that an employee's failure to complain to the employer about the adverse working conditions "forecloses" a finding of good reason caused by the employer), *review denied* (Minn. July 26, 1984).

There is no evidence in the record to support the ULJ's finding that Gupta did not take advantage of Dungarvin's grievance procedures. In fact, the record contains evidence to the contrary. One of Gupta's former supervisors testified during the hearing that Gupta "sent grievances in [to Dungarvin]." And the record contains documentation of Gupta's complaints to both Bruflodt and Nelson and evidence of their failure to offer a solution. Further, Gupta has provided evidence that she filed a grievance with Karin Stockwell, a Dungarvin senior director. Stockwell's response specifically referred to

Gupta's grievance. The ULJ inexplicably excluded this evidence. We may reverse a ULJ's decision if it is unsupported by substantial evidence in the record, and we do so here. *See* Minn. Stat. § 268.105, subd. 7(d)(5) (2010).

DEED's Request for Guidance

Finally, DEED expresses confusion about applying this court's recent opinion in *Werner* to the facts of this case. *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010). But *Werner* is distinguishable from the current case and is thus irrelevant. First, *Werner* dealt solely with an issue of transportation. *Id.* at 842. And unlike situations such as this, where an employer requires an employee to reside on its premises as a live-in counselor, "transportation is usually considered the problem of the employee." *Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W.2d 314, 316 (1976). We found in *Werner* that "[t]ransportation to and from work had no direct relation to Werner's performance of her employment with Medical Professionals; the record reflects that transportation was ultimately her responsibility, not the employer's." *Werner*, 782 N.W.2d at 842. The present case is an example of the exception we explained in *Werner*, namely, that an employee may have good reason to quit when conditions having direct relation to her work and being her employer's responsibility are significantly altered. *Id.* The conditions placed on Gupta's employment were directly related to her work and were Dungarvin's responsibility.

Reversed.