COURT OF APPEALS
DECISION
DATED AND FILED

September 18, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-3328 **Cir. Ct. No. 02-CV-124**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

HUTCHINSON TECHNOLOGY, INC.,

PETITIONER-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND SUSAN ROYTEK,

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Hutchinson Technology appeals from a judgment affirming an administrative decision concluding that it unlawfully discriminated against Susan Roytek on the basis of a disability. The issues relate to the existence

of a disability and whether Hutchinson failed to make reasonable accommodation. We affirm.

¶2 Roytek was a Hutchinson production employee. She held a position that worked twelve-hour shifts. Due to a back condition, she was restricted to working no more than eight hours daily. Hutchinson terminated her employment, and Roytek filed a complaint with the Department of Workforce Development alleging unlawful discrimination on the basis of disability. The hearing examiner decided in Roytek's favor, as did the Labor and Industry Review Commission (LIRC), and then the circuit court.

¶3 Hutchinson argues that LIRC erred by concluding that Roytek is a person with a disability. The relevant definition provides that she must have "a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work." WIS. STAT. § 111.32(8)(a) (2001-02).[1] LIRC held that the back condition limits her capacity to work. Hutchinson relies on federal case law to argue that, to meet this definition, Roytek must be limited in her capacity to work in general, and not just at a specific job. However, Hutchinson also concedes that this legal question is already answered by existing Wisconsin case law, which held that this part of the definition applies to the particular job in question. ***City of La Crosse Police & Fire Comm'n. v. LIRC***, 139 Wis. 2d 740, 761-62, 407 N.W.2d 510 (1987). We agree that this issue is resolved against Hutchinson by that case.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 Hutchinson next argues that LIRC erred by holding against it on the issue of reasonable accommodation. LIRC concluded that Hutchinson did not meet its burden to demonstrate that it would be unreasonable to accommodate Roytek's disability by allowing her to work a shorter shift. *See* WIS. STAT. § 111.34(1)(b). The commission's determination of reasonable accommodation is entitled to "great weight" deference. ***Crystal Lake Cheese Factory v. LIRC***, 2003 WI 106, ¶¶29-30, 664 N.W.2d 651. This means that we uphold LIRC's decision if it is reasonable and not contrary to the clear meaning of the statute, even if we conclude that another interpretation is more reasonable. ***Id.***

¶5 In this case, LIRC concluded that Hutchinson did not produce evidence of hardship it would suffer by accommodating Hutchinson with an eight-hour shift. LIRC's decision was based in part on the fact that Hutchinson had already done so for a period of several months, but still did not produce evidence of hardship during that period. On appeal, Hutchinson makes several arguments about the reasonableness or hardship of requiring it to allow an employee an eight-hour shift. However, it remains unable to point to significant evidence in the record that demonstrates hardship in this particular situation, rather than speculation or theoretical complaints. Hutchinson has not convinced us that LIRC's decision was unreasonable.

¶6 Hutchinson next argues that, regardless of the reduction in working hours, Roytek's other physical restrictions make it unreasonable to accommodate her disability. In particular, Hutchinson focuses on the fact that Roytek would be limited to performing only one of the four functions that employees in her position are usually rotated through. But here again, Hutchinson does not point to sufficient evidence to demonstrate the unreasonableness of making this accommodation in the specific context of its production process. "A reasonable

accommodation is not limited to that which would allow the employee to perform adequately all of his or her job duties. A change in job duties may be a reasonable accommodation in a given circumstance." ***Id.***, ¶52.

¶7 Finally, Hutchinson argues that LIRC erred by ordering it to reinstate Roytek and give her back pay through the date of reinstatement. Hutchinson argues that this was erroneous because the company closed Roytek's department after her termination, and therefore she should receive back pay only up to the time she would have been laid off, and there should be no reinstatement order. Roytek argues that Hutchinson waived this issue by not raising it before LIRC. We agree. *See* ***Lange v. LIRC***, 215 Wis. 2d 561, 572, 573 N.W.2d 856 (Ct. App. 1997). In addition, Hutchinson cites no relevant statute or applicable case law to guide us in analyzing this situation, and therefore we decline to address the issue as inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.