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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1075**

Judith Dale,  
Relator,

vs.

RBC Capital Markets Corporation,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed March 23, 2010  
Affirmed  
Connolly, Judge**

Department of Employment and Economic Development  
File No. 21887706-3

Judith C. Dale, Edina, Minnesota (pro se relator)

RBC Capital Markets Corporation, c/o TALX UCM Services, Inc., St. Louis, Missouri  
(respondent)

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

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and  
Johnson, Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit her job without good reason caused by her employer. Additionally, relator contends that the ULJ abused his discretion by failing to take testimony from one of relator's proffered witnesses. Because the ULJ's decision is supported by substantial evidence and is not affected by legal error, we affirm.

### FACTS

Relator Judith Dale was employed by respondent RBC Capital Markets Corp. (RBC) from February 11, 1994, to October 7, 2008. She was a senior sales associate and received a base salary of \$42,500 per year; additionally, she received an extra \$1,000 per month for assisting branch manager Kevin Ketelsleger and, on average, approximately \$900 per month on commission overrides for assisting client associate broker Ron Click. Relator basically performed administrative-assistant duties.

On August 26, 2008, relator was placed on a performance-improvement plan due to a mistake she made in transferring money from a client's account. The client had multiple accounts, and relator transferred money to RBC from the wrong account. On October 6, relator was informed of a change in the nature of her employment: instead of remaining a senior sales associate, she would work as a receptionist and wire operator. Her base salary would remain the same, but she would lose the extra \$1,900 per month that she earned for assisting Ketelsleger and Click. This amounts to \$22,800 per year, or

more than one-third of her income from working at RBC. On October 7, relator was offered the option to accept a buyout (terminating her employment and paying her through December 31) instead of accepting the changed work responsibilities. Relator accepted the buyout.

Relator applied for unemployment benefits and the determination of ineligibility was ultimately appealed to the ULJ. Following an evidentiary hearing, the ULJ found that relator quit her employment at RBC and was not discharged. He found that she “did not quit her job because of a reduction in her wages,” but quit because she felt that the change in job assignments was demeaning. When asked by the ULJ why she quit, relator first cited stress: “I mean, getting everybody to understand that I was no longer in the position that I was, was very stressful. It was very difficult. It was very demeaning.” Relator considered the change to be a demotion. She explained that this was “emotionally unacceptable” both to her and many of her colleagues.

The ULJ then asked relator if the reduction in her salary was a factor in her decision to leave RBC. She responded, “Well, it had, it did have bearing. However, you know my, my preference would have been to have stayed employed.” Seeking clarification, the ULJ and relator had the following exchange:

ULJ: My next question is, was the reduction in the earnings that you’ve testified to also a reason for your, for your quitting your job or not?

RELATOR: I would have accepted the reduction in my earnings.

ULJ: Okay. Alright. So that wasn’t a factor?

RELATOR: That wasn’t the primary factor, no.

ULJ: Well, okay. It wasn’t a factor. You’re saying two different things.

RELATOR: No, no. I, I guess if you're going to pin me down to that, it, no, it wasn't a factor.

ULJ: Okay. It was the demeaning nature of the demotion?

RELATOR: Correct.

Relator also testified that she felt there was a hostile work environment which was a contributing factor to her decision to quit. She had complained to human resources for the first time about the work environment in August 2008, after she was placed on the performance-improvement plan. Human resources told relator that it would not take any action. Relator testified that Click yelled at her and treated her in a condescending manner, and that he was generally loud and swore a lot. However, Click never swore at relator. Instead, she was upset that Click and Ketelsleger would "completely shut [her] out." For example, she was no longer allowed to plan office events. Relator also testified that Ketelsleger would ask her for her opinions in meetings and then announce that her ideas were "really dumb."<sup>1</sup>

The ULJ found that relator did not quit for a good reason caused by her employer, and ruled that she was ineligible for unemployment benefits. Following relator's request for reconsideration, the ULJ affirmed his earlier findings of fact and decision. This certiorari appeal follows.

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<sup>1</sup> However, she further testified, "And then, he would go and talk to other people in the office, and then he would come back by my desk and he'd say well, on second thought, you were right. But it's, it was always that, well that is dumb, I don't know why you would think that, and completely be disagreeable."

## DECISION

**I. The ULJ did not err in determining that relator is ineligible for unemployment benefits because she quit her job without good reason caused by her employer.**

This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008) (articulating reasons for remand, reversal, or modification). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee had good reason to quit caused by her employer, so as to be entitled to unemployment compensation, presents a question of law, which we review de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

A person “who quit [her] employment because of a good reason caused by the employer” is eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (2008). A good reason to quit caused by the employer directly relates to the employment 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 remain[] in the employment.” *Id.*, subd. 3(a) (2008). A good personal reason to quit is not the same as a good reason caused by the employer. *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997). However, “[t]he law does not require that cause attributable

to the employer be the sole reason for termination.” *Burtman v. Dealers Disc. Supply*, 347 N.W.2d 292, 294 (Minn. App. 1984), *review denied* (Minn. July 26, 1984).

Relator contends that the hostile work environment at RBC would have caused a reasonable employee to quit. Under Minnesota law, harassment constitutes good cause to quit. *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838 (Minn. App. 1987). Harassment has been found where an employee’s coworkers called the employee names, drew profane and derogatory pictures of him, and made derogatory remarks about his wife, *id.* at 837; where a coworker called the employee names, swore at her, and threatened her, *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 592 (Minn. App. 2006); and where a coworker continuously swore and yelled at the employee, exploded into temper tantrums all day long, and behaved in a similar manner toward other employees, *Wetterhahn v. Kimm Co.*, 430 N.W.2d 4, 5-6 (Minn. App. 1988).

In contrast to the work environments in those harassment cases, no one ever swore at relator. No one ever threatened her. She felt insulted by Click and Ketelsleger ignoring her and sometimes making disparaging or belittling remarks about her ideas. While we do not condone the behavior of Click and Ketelsleger, the circumstances causing relator’s unhappiness at work fall far short of the circumstances in the harassment cases discussed above. An employee does not have good reason to quit caused by her employer where there is merely disharmony between the employee and a supervisor. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 697 (Minn. App. 1985). Relator cites no law and presents no reasoning indicating that the conditions at RBC created such a toxic, hostile work environment that a reasonable person in her position

would have quit. Moreover, the evidence in the record indicates that, to the extent relator's supervisors were unfriendly or abrasive, they were unfriendly or abrasive throughout the course of her employment at RBC—yet she never complained about the “hostile” environment until she was placed on a performance-improvement plan.

The ULJ found that relator quit due to the combination of her reaction to what she considered to be a demotion and what she believed to be a hostile work environment. The “demotion” is potentially relevant in two ways. First, an employee has the right to reject a position that “requires substantially less skill than she possesses.” *Marty v. Digital Equip. Corp.*, 345 N.W.2d 773, 775 (Minn. 1984). Here, there is no dispute that relator's title and job responsibilities would change, and she would lose certain particular responsibilities, but there is no evidence in the record indicating that the change from an administrative-assistant position to a receptionist or data-entry position would have caused relator to use substantially less skill than she possesses or was using in her sales-associate position.

Second, relator also contends on appeal that her reduced salary was, although “not the main reason” she accepted RBC's buyout, a contributing factor to her decision. “In determining what constitutes a substantial adverse change, Minnesota courts have held that a reduction in wages of between 19 and 25% constitutes a good reason caused by the employer for quitting, but that a reduction of 15% alone does not constitute a good reason.” *Johnson*, 696 N.W.2d at 801 (noting that a 15% pay reduction coupled with a demotion and less favorable hours constituted a good reason to quit).

We defer to a ULJ's ability to weigh conflicting evidence. *Id.* at 800. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. Viewing the ULJ's factual finding that relator did not quit because of a pay reduction in the light most favorable to the decision, we cannot conclude that this finding is unsupported by substantial evidence and therefore must be reversed. *See id.* at 344 (articulating this standard of review). Relator first testified that the pay reduction was a contributing factor, but upon further questioning, she stated that it was not a factor in why she quit. Relator's self-contradicting testimony provided the ULJ with an opportunity to weigh her conflicting statements and evaluate her demeanor, and the ULJ's finding that the pay cut was not a reason that relator quit is a plausible interpretation of her testimony. Thus, we may not disturb the ULJ's finding. Accordingly, caselaw indicating that pay cuts can create good cause to quit is inapposite. *See Foy v. J.E.K. Indus.*, 352 N.W.2d 123, 124-25 (Minn. App. 1984) (despite 13% reduction in wages, employee was ineligible for unemployment benefits because the evidence indicated that he quit because he was unhappy with his employer), *review denied* (Minn. Nov. 8, 1984).

**II. The ULJ did not abuse his discretion by declining to hear testimony from one of relator's proffered witnesses.**

We may reverse or modify a ULJ's decision if an unemployment-benefits applicant's substantial rights were prejudiced because of "unlawful procedure." *See* Minn. Stat. § 268.105, subd. 7(d)(3). The evidentiary hearing is an evidence-gathering proceeding, not an adversarial contest, and need not follow technical procedural or

evidentiary rules. *Id.*, subd. 1(b) (2008). The ULJ “must ensure that all relevant facts are clearly and fully developed.” *Id.* However, the ULJ may exclude unduly repetitious testimony, and the existence of any fact may be stipulated to. Minn. R. 3310.2921, .2922 (2007).

In addition to relator, the ULJ heard testimony from Andrea Doane, a senior registered client associate whose employment at RBC ended in February 2009, and Susan Sivertson, a wire operator who retired in October 2007. Doane testified that Click was verbally “abusive.” Specifically, he yelled at relator in front of everyone else in the office. Doane considered his treatment of relator to be “demeaning” and his general demeanor to be “loud,” “aggressive,” and “volatile.” Sivertson testified that Click “swore all the time,” and even punched a broker in 2002. Sivertson also testified that she felt as if Ketelsleger “treated [relator] like dirt.” She stated that Ketelsleger ignored relator and “was not a very nice man at all.”

Relator also sought to procure testimony from Diane Hostettler, an assistant manager and compliance officer who retired in late 2005. Relator wanted Hostettler to testify to the poor character of Click and Ketelsleger. The ULJ ruled that Hostettler could not testify, explaining that she lacked relevant first-hand information with regard to the circumstances in 2008 that prompted relator to quit because Hostettler had not worked at RBC for over two years when relator quit.

Hostettler’s testimony would have been repetitious. It would not have borne on credibility because RBC did not dispute relator’s entitlement to benefits or participate in the evidentiary hearing—all of the evidence relator presented was uncontradicted. On

appeal, relator does not contend that the absence of Hostettler's testimony was prejudicial or rendered the process unfair, but asserts that Hostettler should have been allowed to testify because she "knew the dynamics of the office" and was familiar with Click's and Ketelsleger's personalities. Because the testimony would have added little, if anything, to the proceedings, the ULJ did not abuse his discretion by declining to hear from Hostettler.

**Affirmed.**