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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1678**

Ramona McKibben,
Relator,

vs.

Arvig Enterprises, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed June 25, 2012
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 27827808-3

Ramona McKibben, Dent, Minnesota (pro se relator)

Lisa Edison-Smith, Vogel Law Firm, Fargo, North Dakota (for respondent employer)

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

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) declaring her ineligible for unemployment-compensation benefits on the ground that she quit her employment without a good reason caused by the employer. Because substantial evidence supports the ULJ's decision, we affirm.

FACTS

Relator Ramona McKibben worked as a housekeeper for respondent Arvig Enterprises, Inc. from June 2007 until May 2, 2011. On that day, the human resources director, the chief financial officer, and McKibben's supervisor met with McKibben and provided her with a final written warning. The warning related to several concerns with McKibben's work performance: her continuing requests to change her work schedule; working unauthorized overtime; excessive talking while working; criticism of co-workers; and refusal to perform a safety audit. McKibben had also asked for the meeting because she had been denied a schedule change and because she had ideas about cost savings for the employer.

According to the human resources director, McKibben was performing her cleaning duties well, but she was required to change her behavior relating to the warning areas and needed either to sign the warning or to voluntarily resign. When the warning issues were discussed at the meeting, McKibben stated she felt ill and that she was quitting. She declined to sign the warning.

McKibben applied for unemployment-compensation benefits; her application was denied. At a hearing on appeal before a ULJ, McKibben testified that she had only asked for a different schedule because of a relative's surgery and transportation issues; she did not talk excessively; she had only complained about a co-worker because that person did not clean well; and she did not perform safety audits because she did not have sufficient training or time to do so. She testified that she did not believe the allegations in the warning and therefore could not sign it. The human resources director testified that McKibben had not asked for training in safety-audit procedures or help in completing her duties, but only requested a change in schedule from evening to day hours. She testified that she wished to keep McKibben as an employee because her cleaning abilities were "far above average," but that McKibben was required to correct the behaviors described in the warning.

The ULJ determined that McKibben was ineligible for unemployment benefits because she quit without a good reason caused by her employer when she chose to end employment, rather than sign the warning. McKibben requested reconsideration, and the ULJ affirmed. The ULJ credited the testimony of the employer's representatives and determined by a preponderance of the evidence that the request to sign the warning was not unreasonable and was not so adverse to McKibben that it would compel a reasonable worker to quit, rather than stay in the employment. This certiorari appeal follows.

DECISION

This court reviews a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are

unsupported by substantial evidence in view of the record as a whole or affected by a legal error. Minn. Stat. § 268.105, subd. 7(d) (2010). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee's conduct makes the employee ineligible to receive unemployment benefits, including whether the employee quit without good reason caused by the employer, presents a question of law, which this court reviews de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Generally, a person who quits employment is not eligible for unemployment benefits unless a statutory exception to ineligibility applies. Minn. Stat. § 268.095, subd. 1 (2010). Under one exception, an employee may still receive benefits if he or she "quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1). A good reason to quit caused by the employer must be a reason adverse to the employee that directly relates to the employment and for which the employer has responsibility. *Id.*, subd. 3(a)(1), (2) (2010). It must also be a reason "that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a)(3) (2010).

Whether an employee quit because of a good reason caused by an employer requires a fact-specific analysis. *Id.*, subd. 3(b) (2010). An employee who experiences adverse conditions must complain to his or her employer and give the employer an opportunity to correct those conditions before they may constitute a good reason to quit.

Id., subd. 3(c) (2010). And an employee's decision to quit because of notification of future discharge or because of the employee's employment misconduct is not considered a good reason to quit caused by the employer. *Id.*, subd. 3(e), (d) (2010).

McKibben argues that she quit based on a good reason caused by the employer because she was pressured to sign a warning with which she disagreed, and the employer's witnesses did not tell the truth about her work performance. But the ULJ found that, although McKibben disagreed with the basis for the warning, the testimony of the supervisors was more credible because it reflected the more likely version of the circumstances. We defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. The ULJ also determined that a preponderance of the evidence did not show that the request to sign the warning was unreasonable. *Cf. Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985) (stating, in context of determining employee misconduct, that generally, an employee's refusal to comply with an employer's reasonable request amounts to misconduct). We agree with the ULJ that receiving a warning for the behaviors documented by the employer would not cause an average, reasonable employee to quit, rather than remain in the employment, so that McKibben's receipt of the warning did not create a good reason to quit caused by the employer.

McKibben also alleges that she was subjected to a hostile work environment, which provided her with good reason to quit. She cites specific instances in which: (1) the employer sent out an e-mail request to clients, requesting responses on the quality of her work; (2) a supervisor questioned her work procedures with a coworker; (3) a

supervisor questioned her attendance when she was actually at work; (4) a service award was removed from her personal area; and (5) another supervisor misinterpreted her justifiable concern with performing safety inspections without training. But these claims are not material to her decision to quit. And even if we were to consider McKibben's argument, situations in which an employee is "simply frustrated or dissatisfied with . . . working conditions" do not constitute good reason to quit caused by the employer. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). McKibben's differences with her employer may have provided her with a good personal reason to quit, but they do not amount to a good reason to quit caused by the employer for the purpose of establishing her eligibility for unemployment-compensation benefits. *See Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 368 (Minn. App. 2000) (referring to unemployment decisions which hold that good personal reasons to quit do not equate to good cause), *review denied* (Minn. Aug. 15, 2000).

Because McKibben failed to demonstrate that she quit her employment for a good reason caused by the employer, we affirm the ULJ's determination that she is ineligible to receive unemployment-compensation benefits.

Affirmed.