STATE OF MINNESOTA
IN COURT OF APPEALS
A07-642

Loretta Jane Jenson,
Relator,

vs.

Grove Homes Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

Filed April 1, 2008
Affirmed
Hudson, Judge

Department of Employment
and Economic Development
File No. 17071 06

Loretta Jane Jenson, 8395 Walden Road, Brainerd, Minnesota 56401 (pro se relator)

Grove Homes Inc., P.O. Box 218, Pequot Lakes, Minnesota 56472 (respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, Minnesota 55101 (for respondent DEED)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Poritsky, Judge.*

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

HUDSON, Judge

On certiorari appeal from the unemployment-law judge's decision that relator was disqualified from receiving unemployment benefits, relator argues that the decision was in error because she quit for a good reason caused by her employer. Because the unemployment-law judge's decision was supported by substantial evidence, we affirm.

FACTS

Relator Loretta J. Jenson worked part time for Grove Homes Inc. (Grove) a group home for developmentally challenged adults, from July 2002 to November 2006. Relator quit her employment with Grove on November 8, 2006, after incurring an injury while on the job and following a series of incidents with Grove's owner, Joe Marcum (Marcum).

On October 14, 2006, Marcum followed relator to a shopping mall where relator had taken some of Grove's residents. Marcum was concerned because he had received reports that one of the residents was acting aggressively that day. Upon arriving at the mall, Marcum noticed that three residents had been left behind in relator's car while the others shopped. When relator left the store, she spotted Marcum sitting in his car across the street and asked Marcum whether he was following her. Marcum said, "Yes."

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

On or about October 14, 2006, relator left a note on her time card complaining that another co-worker reported late to work on two days. Marcum wrote a note back to relator stating that the co-worker was not late on the two days relator alleged, and that relator herself was late several times, and admonishing relator to not be so "nit-picky."

On October 30, 2006, relator injured her shoulder while at work. Relator provided a doctor's note restricting her from using her left shoulder to push, pull, and lift. Relator informed her immediate supervisor, Jeanette Sortor, of her injury and stated that as a result of her injury she could not use the vacuum. Sortor assured relator that she would not have to vacuum and informed her that she could call for help if necessary. Relator had scheduled days off from work from November 1, 2006, to November 5, 2006.

Relator returned to work on November 6 and 7, 2006, and found one resident to be very upset, including throwing tantrums and turning over furniture. Relator found it difficult to work alone with this resident as a result of her work restrictions. Relator called for help on both November 6 and November 7. Marcum and Sortor came to assist relator on each day when she called. Relator testified that she did not receive the help that she needed with the aggressive resident, but Marcum and Sortor testified that the resident was not acting in an unusual manner and that they assisted relator when she called for help. And relator admitted at the hearing that she was able to call for help when she needed it and that she was not required to work outside her restrictions when help was present.

On November 8, 2006, relator called Marcum to tell him that November 7 was her last work day. Relator informed Marcum that she had previously decided that if she

received another letter from him, she would quit, and that because she had received an all-staff letter dated November 6, 2006, on November 8, 2006, she decided to quit.

After quitting her employment with Grove, relator filed for unemployment benefits. Respondent Department of Employment and Economic Development determined that relator was disqualified to receive unemployment benefits because she quit her employment without a good reason caused by her employer. Relator appealed the disqualification determination, alleging that she quit her employment due to a good reason caused by her employer. Specifically, relator claimed that she informed her employer about her safety concerns, but the employer was "not interested in complying with [her] work restrictions, or working with [her] on [her] feeling[s] of harassment." After a hearing, the unemployment-law judge (ULJ) affirmed the decision that relator was disqualified from receiving unemployment benefits because she quit her employment without a good reason caused by her employer. Relator requested reconsideration of the ULJ's decision. Upon reconsideration, the ULJ stated that relator's request for reconsideration restated arguments already made and considered at the original hearing and affirmed the original findings of fact and decision. This certiorari appeal follows.

D E C I S I O N

Relator argues generally that the ULJ's decision was in error because she quit her employment for a good reason caused by her employer "due to lack of support, non compliance [with her] work restriction, inability to provide a safe environment for [herself] and the residents, lack of concern for [herself] and the residents, harassment, lack of respect, mistreatment and stress." We disagree.

This court "may affirm the decision of the [ULJ] or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision" (1) violates constitutional provisions; (2) is in excess of the statutory authority or jurisdiction of the department; (3) was made upon unlawful procedure; (4) affected by other error of law; (5) is "unsupported by substantial evidence in view of the entire record as submitted"; or (6) is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2006); *see Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (applying this standard of review). This court reviews factual findings by the ULJ "in the light most favorable to the decision" and gives deference to the ULJ's credibility determinations. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an employee had a good reason to quit caused by the employer is a question of law, which this court reviews de novo. *Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 367–68 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000).

Under Minn. Stat. § 268.095, subd. 1 (2006), an applicant for unemployment benefits who quits her employment is disqualified from receiving unemployment benefits unless she meets an exception under the statute. Here, relator was denied unemployment benefits because she did not establish that she quit her employment due to "a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (stating that an applicant is qualified to receive unemployment benefits if she quit for a good reason caused by the employer). A good reason caused by the employer is defined as a reason that: (1) "is directly related to the employment and for which the employer is responsible"; (2) is

adverse to the employee; and (3) "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a) (2006).

A good reason to quit caused by the employer is a "reason that is real, not imaginary, substantial, not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Hanke v. Safari Hair Adventure*, 512 N.W.2d 614, 616 (Minn. App. 1994) (quotation omitted). Further, the standard for determining reasonableness is "applied to the average man or woman, and not to the supersensitive." *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 511 (Minn. App. 1997) (quotation omitted).

Relator first argues that she quit due to a good reason caused by her employer because she was required to work outside her work restrictions after informing her employer of her shoulder injury. Relator contends that she informed Sortor on November 6, 2006, that during her shift that day, she had to work beyond her restrictions to control one of the residents. Relator claimed that she also was forced to work beyond her restrictions on November 7, 2006.

In general, "[a]n employee's failure to complain about a serious problem before quitting may foreclose a determination of good cause to quit that is attributable to the employer." *Id.*; *see* Minn. Stat. § 268.095, subd. 3(c) (2006) (stating that adverse working conditions are a good reason to quit caused by the employer if the employee complained to the employer and gave the employer "a reasonable opportunity to correct the adverse working conditions"); *see also* Minn. Stat. § 268.095, subd. 1(7) (stating that

quitting due to a "serious illness or injury made it medically necessary" does not disqualify an employee from unemployment benefits if the employee informed "the employer of the serious illness or injury and request[ed] accommodation and no reasonable accommodation [was] made available"). Further, "[w]hen an employee complains about an alleged fear of working conditions and receives an expectation of assistance, the employee has a duty to complain further if the conditions persist." *Haskins*, 558 N.W.2d at 511.

Here, relator did not show that she complained of working outside her restrictions on November 6 and 7 in order to give Grove an opportunity to correct the situation before she quit. At the hearing, relator questioned Sortor as to whether she recalled relator telling her after relator's November 6 shift that she had problems restraining one of the residents and, as a result, that she had to work outside her restrictions. But Sortor could not recall this conversation. The ULJ credited Sortor's and Marcum's testimonies that relator did not inform them of her concerns regarding working outside her working restrictions on November 6 and 7 and concluded that relator's "concerns that her restrictions made it impossible for her to safely work at Grove Homes were not supported by the preponderance of the evidence." The ULJ also found that while relator may have felt that her work restrictions made her work unsafe, she was able to call for help and received help on November 6 and November 7, 2006. The ULJ found that relator admitted that "she was never asked to work outside her restrictions when help was present." And the ULJ also concluded that "her employer's reaction to those restrictions, were not a good reason caused by the employer for quitting."

Relator does not explain how the ULJ's findings are unsupported by substantial evidence or are otherwise in error. And relator does not point to any evidence in the record indicating that she informed Grove of the difficulties she encountered on November 6 and November 7, or otherwise continued to complain and give Grove an opportunity to correct the problems she allegedly experienced. Further, relator does not explain why we should not give deference to the ULJ's determination that Sortor and Marcum were more credible regarding relator's work-restriction allegations. Accordingly, relator did not establish that she quit due to a good reason to quit caused by her employer based on her work restrictions.

Relator also argues that she quit for a good reason caused by her employer due to Marcum harassing and disrespecting her. The ULJ agreed with relator that Marcum was "a difficult boss" and that his decisions relating to scheduling, his following relator, and his general communication with relator "were adverse" to relator "but not so adverse as to compel the average, reasonable worker to quit and become unemployed."

Relator contends, however, that Marcum calling her "nit-picky" was harassment and that his following her to the grocery store constituted disrespectful behavior. But one stray comment that relator was being "nit-picky" does not rise to the level of harassment that would compel a reasonable person to quit their job. Further, while the record indicates that Marcum followed relator once due to concerns about resident safety, there is no other evidence in the record indicating that Marcum stalked or otherwise disrespected relator. In addition, an employee must notify the employer of harassment and then receive no response to claim unemployment benefits, and there is no evidence of

relator informing Marcum or Sortor of her harassment concerns. *See Hanke*, 512 N.W.2d at 617 (stating that if an employee complained about harassment and received no assistance or expectation of assistance, the employee has a good reason to quit).

Relator does not explain how the ULJ's finding that the reasons why she quit would not compel an average reasonable employee to quit was unsupported by substantial evidence or otherwise in error. In fact, relator states in her brief that she told Marcum that his letter dated November 6, 2006 compelled her to quit and contends that she was upset because she wanted to talk with her supervisors personally rather than receive letters through the mail. This letter, however, was addressed to all staff and concerned employee interactions with a certain resident; there is no indication in the record that the letter was directed specifically at relator. Relator's sensitivity to this letter and her desire to communicate with her employer face-to-face appears to be based on personality conflicts and other irreconcilable differences between relator and her supervisors. But a personality conflict with an employer does not constitute a good reason caused by the employer to quit. *Trego v. Hennepin County Family Day Care Assoc.*, 409 N.W.2d 23, 26 (Minn. App. 1987) (holding that employee's dissatisfaction with the interim director was not a good reason to quit caused by the employer). Thus, while relator may have had several good personal reasons to quit, she did not establish that she had a good reason to quit caused by her employer that would qualify her for unemployment benefits. *See Kehoe v. Minn. Dept. of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (holding that while employee's reason to quit for early-retirement

incentives was a good personal reason to quit, it was not a good reason caused by the employer).

Accordingly, relator did not establish that the ULJ's decision that relator was disqualified from receiving unemployment benefits was unsupported by substantial evidence or based on some other error.

Affirmed.