STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1075

Kathleen M. Rooney,
Relator,

vs.

Associated Milk Producers Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 20, 2008
Affirmed
Connolly, Judge

Department of Employment and Economic Development
17841 06

Kathleen M. Rooney, 24010 Highway 23 NE, Hawick, MN 56273-7687 (pro se relator)

Associated Milk Producers Inc., Attn: Geoff Davies, P.O. Box 455, New Ulm, MN 56073-0455 (respondent)

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

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Harten, Judge.*

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

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

CONNOLLY, Judge

Relator challenges the unemployment-law judge's (ULJ) decision to disqualify her from receiving unemployment benefits. The ULJ concluded that relator had been sexually harassed, but quit before management was able to take corrective steps. Because relator failed to provide respondent-employer with an opportunity to take timely and appropriate action, we affirm.

FACTS

Relator Kathleen M. Rooney began working for respondent Associated Milk Producers Inc. (AMPI), as a secretary in July 1998. On April 3, 2006, relator came to work with a sore back. One of her supervisors, DuWayne Olson, asked her what was wrong, and she told him that her back hurt. Relator's coworker, Ron Keller, then asked if she knew how to fix that. She inquired as to how, and he stated that she should let her husband be "on top." Relator was upset at the sexual innuendo and told Keller not to speak to her that way. Olson admonished Keller, telling him that they "weren't going to go there." Olson later informed division manager Matt Quade about the incident and said that he had taken care of the problem.[1]

On April 18, 2006, another coworker, Ritchie Gottwald, commented to relator that he had heard down in the plant that she was sexually active. Relator was angry and told Gottwald to go back to work and leave her alone. The next day, relator informed

[1] Relator asserts that Olson never informed Quade about this harassment in violation of AMPI's sexual-harassment policy.

Gottwald that if he ever made comments about her personal life again, she would "flatten him."

Several days later, relator attended a wedding at which coworker Keller was also a guest. Keller approached relator, who was sitting at a table with her husband and several other friends, and again inquired about her back injury and letting her husband be on top. Relator told him to shut his mouth and that what happens in her bedroom stays in her bedroom. On the Monday morning following the wedding, relator informed Olson of Keller's comment at the wedding. Olson told her that he had no control over what happened outside the workplace. Relator testified that Olson also told her she had to consider the source, because Keller had a "smart mouth" and probably thought this was a "funny little joke." Olson does not remember saying this to relator.

Later that week, relator met with division manager Quade to discuss these inappropriate comments. Quade immediately spoke with Gottwald and ordered him to apologize to relator.[2] Quade also informed relator that he would speak with Keller. Relator had no further problems with Gottwald or Keller making sexually inappropriate comments to her at work.

In August 2006, another coworker, Gary Dreger, called relator at work. Dreger told her that he had gotten a phone call from another coworker, Richard Langner, to tell him that a third coworker, Gary Skroch, had said that relator and Dreger appeared to be dating at a recent company picnic. Soon thereafter, relator and her husband received a

[2] There is some dispute as to when Gottwald apologized to relator. Quade believes it was the same day, whereas relator believes it was not until June.

phone call at home from Dreger's wife. Dreger's wife informed relator's husband that Dreger and relator were having an affair. Thereafter, relator and her husband separated.

At work the next day, relator asked Dreger to call her husband and tell him that they were not having an affair. Dreger contacted relator's husband on her behalf, but they remained separated. A few days later, relator confronted Langner and told him that the rumors had to stop. She also demanded that he tell Skroch to stop spreading lies.

Later that month, while working together at the state fair, Langner asked Dreger if he was having an affair with relator. Dreger denied the affair and subsequently informed relator that Langner had asked this question.

In late September 2006, after a meeting, Dreger, Langner, and Skroch went out for a beer. Dreger told Langner that he was having trouble in his marriage because his wife thought he was having an affair. Langner asked if Dreger was having an affair with relator, and Dreger again denied it. Dreger told relator about this conversation as well.

After this incident, relator met with Quade and office manager Neil Fischer. Relator informed them of the rumor circulating that she was having an affair with Dreger and how it had affected her marriage and ruined her life. She requested that a sexual-harassment class be held, and they agreed. Relator also told them that she wanted an apology from Skroch and Langner and to be reimbursed for money that she had spent to support herself after separating from her husband. Quade and Fischer recommended that she speak with an employer-sponsored counselor. On October 17, 2006, management held sexual-harassment training as requested by relator. It was mandatory that all plant employees attend.

Approximately one week after the training, relator informed Fischer and Quade that she wanted the employer to launch a sexual-harassment investigation. Quade requested that the director of human resources, Geoff Davies, come to the plant to investigate the events that had occurred. Management, including Davies, Quade, Fischer, and Kevin Rausch, supervisor of the field-service personnel, held a meeting with relator on October 27, 2006. During the meeting, which lasted approximately 45 minutes, relator detailed her concerns and management inquired as to a sufficient remedy. Relator requested that Skroch and Langner be terminated. She also sought $2,500 to compensate her for expenses incurred after her husband asked her to leave their house. Management assured relator that a formal investigation would be undertaken.

The investigation began on the following Monday, October 30, 2006. Management interviewed several field men, including Skroch, Langner, and Dreger, on November 1. Relator was scheduled to meet with management again on November 2. She gave Fischer her notice to quit on the morning of November 2, before that scheduled meeting occurred.

Relator alleges that two things happened that led her to quit. First, Keller commented that relator's personality had completely changed and asked what they had done to her. Relator interpreted this to mean that he knew something inappropriate was going on at work. Second, a customer came in on November 1 and asked relator if she had been in counseling. When relator inquired as to why the customer would ask such a question, she answered that it was a small town and everyone knew each other's business. Relator left that afternoon and quit the next morning.

Thereafter, relator applied for unemployment benefits with the Department of Employment and Economic Development (DEED). A DEED adjudicator initially determined that relator had quit for a good reason caused by the employer and that she was not disqualified from receiving unemployment benefits. AMPI appealed. A de novo hearing was held, and the ULJ reversed the initial decision, holding that relator had not quit for a good reason caused by the employer and that she did not fit within any of the other exceptions to disqualification. Relator filed a request for reconsideration to the ULJ, who issued an order affirming his decision. This appeal follows.

D E C I S I O N

Relator asserts that she is entitled to unemployment benefits because (1) the finding that she quit prematurely while the allegations were still being investigated was erroneous; (2) she quit because of sexual harassment that had not been handled properly despite the company's sexual-harassment policy set out in the handbook; (3) the hearing and the ULJ were unfair; and (4) the ULJ's credibility determinations were flawed.

The ULJ determined that although relator was subjected to inappropriate sexual comments, the evidence did not show that AMPI had failed to take timely and appropriate remedial action. Rather, relator quit before giving management a reasonable opportunity to correct the problem. She was therefore disqualified from receiving unemployment benefits. We agree.

The standard of review is set forth in Minn. Stat. § 268.105, subd. 7(d) (2006), which provides:

> The Minnesota Court of Appeals may affirm the decision of the unemployment law judge 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 are:
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> (1) in violation of constitutional provisions;
> (2) in excess of the statutory authority or jurisdiction of the department;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
> (6) arbitrary or capricious.

An appellate court will review factual determinations in the light most favorable to the decision. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996). The factual findings can be overturned if there is not substantial evidence in the record to support them. *Id.* This court gives deference to the ULJ's credibility determinations. *Skarhus v. Davanni's*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000)). Whether an individual quit employment and the reason the individual quit are questions of fact for the ULJ. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). This court, however, reviews de novo the legal question of whether the applicant falls under one of the exceptions to disqualification under Minn. Stat. § 268.095, subd. 1 (2006). *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

1. The ULJ did not err by finding that relator quit prematurely while the allegations were still being investigated.

An applicant who quits employment is disqualified from receiving unemployment benefits unless one of eight enumerated exceptions applies. The statute provides in pertinent part: "An applicant who quit employment shall be disqualified from all unemployment benefits according to subdivision 10 except when: (1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3[.] Minn. Stat. § 268.095, subd. 1.

"Good cause" is defined as 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) (2006).

> An applicant has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when:
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> . . . .
>
> (3) the conduct or communication has the purpose or effect of substantially interfering with an applicant's work performance or creating an intimidating, hostile, or offensive working environment.

Id., subd. 3(f).

The ULJ determined that relator was inappropriately harassed at work. He further concluded, however, that the employer had taken timely and appropriate action. Whether relator had a good reason caused by the employer to quit is a question of law, which this court reviews de novo. *Peppi*, 614 N.W.2d at 752.

The first inappropriate comments were made in April 2006 by coworkers Keller and Gottwald. Olson admonished Keller immediately, and Quade spoke with Gottwald and demanded that he apologize to relator.[3] These oral warnings seemed to be effective, as no further inappropriate comments were made by either coworker.

The rumor that relator and Dreger were having an affair first arose in August 2006. Eventually, relator spoke with Quade and office manager Fischer about these rumors. She requested that sexual-harassment training be conducted at the plant. Management agreed, and the mandatory training was held soon thereafter. Relator then informed Quade that she would like an investigation into the events surrounding the disturbing rumor. Quade called human-resources director Davies, who came to the plant and held a meeting with relator and management on October 27, 2006. They informed relator that a full investigation would be undertaken. Management interviewed the workers involved and scheduled a meeting with relator for November 2 to discuss the situation. Relator quit before that meeting was held.[4]

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[3] Relator argues that Olson did not admonish Keller and that Olson never informed Quade of the harassment. The ULJ, however, discounted relator's allegations. As discussed *supra*, these credibility determinations are given deference by this court.

[4] The investigation was finished November 30, 2006, about a month after relator had quit. At that time, management issued written warnings to Langner and Skroch.

The ULJ's conclusion that management had acted in a timely and appropriate manner was not erroneous. The ULJ summarized the analysis:

> While the evidence does support a finding that [relator] was subjected to inappropriate communications of a sexual nature which tended to create a hostile or offensive working environment, the evidence does not support a finding that AMPI failed to take timely and appropriate action. After reviewing the entire record, it is concluded that AMPI's management did take [relator's] complaints seriously and did take appropriate action. [Relator], however, did not allow AMPI's management a reasonable opportunity to correct the situation by quitting prematurely when the matter was still being investigated.

It was not unreasonable to expect relator to give management a sufficient opportunity to investigate the alleged misconduct and take action. Instead, she quit before that could be accomplished. Therefore, the ULJ's determination that she quit without good reason caused by the employer and is disqualified from receiving unemployment benefits is affirmed.[5]

2. The sexual-harassment complaint was handled properly in accordance with the company's sexual-harassment policy set out in the handbook.

AMPI has a policy that states that sexual harassment will not be tolerated. According to the handbook, aggrieved employees who feel comfortable doing so should tell the harasser directly to stop immediately. In the alternative, the aggrieved employee should notify a supervisor or the division manager. In the event that the aggrieved

[5] Our ruling should in no way suggest that this court condones the inappropriate statements made by respondent's employees. Moreover, it is limited to the exact issue presented to us, which is whether or not relator is entitled to unemployment benefits.

employee notifies a supervisor, the supervisor must inform the division manager of all complaints.

Relator contends that AMPI violated the policy because her supervisor, Olson, failed to notify division manager Quade of the incidents involving coworker Keller. Quade testified, however, that Olson told him of the incident and how it was immediately handled. Quade decided that Olson's admonishment of Keller was sufficient. Furthermore, relator acknowledged in her testimony that when she complained to Quade about Gottwald's comment, Quade talked to Gottwald the same day. Substantial evidence supports the ULJ's findings that Olson and Quade acted in an appropriate and timely manner to deal with the harassment.[6]

3. There is no evidence in the record to indicate that the hearing before the ULJ was unfair.

Relator asserts that the ULJ conducted an unfair hearing on her claim because he continued the hearing, giving AMPI more time to prepare its defense. She also argues that the ULJ unfairly refused to consider her comments about AMPI's sexual-harassment policy in his order. These contentions are not supported by the record.

First, the hearing was continued because there was not time to hear all of the testimony on the first day. It is standard procedure for a ULJ to continue a hearing for another day if more time is needed to take additional testimony. The date scheduled was the next available for all parties involved. Relator agreed to that date. Furthermore, any

[6] As discussed *supra*, these credibility determinations of the ULJ are given deference by this court.

extra time that AMPI had to prepare was also available to relator. This continuance did not make the hearing unfair to relator.

Second, additional evidence cannot be heard on request for reconsideration, other than to determine whether a new hearing is necessary. Minn. Stat. § 268.105, subd. 2(c) (2006). Relator submitted AMPI' sexual-harassment policy at the first hearing.[7] The ULJ also took testimony regarding the policy. Relator, however, attempted to submit additional information about the policy on reconsideration. The ULJ correctly concluded that this supplemental information could not be considered. This exclusion was statutorily mandated. Therefore, the record does not support the assertion that the ULJ was unfair in conducting this hearing.

4. There is nothing in the record to support the contention that the ULJ's credibility determinations were flawed.

This court gives deference to a ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006). The ULJ, in the order of affirmation, stated that

> to the extent that the testimony given by [relator] at the hearing conflicts with the findings of fact based upon testimony or other evidence received from the employer's witnesses, the unemployment law judge finds [relator's] testimony to be either self-serving or vague and ambiguous

[7] It was submitted as relator's exhibit 1.

> and the evidence offered by the other witnesses is preferred to [relator's] testimony.

The ULJ clearly stated his reasons for discrediting relator's testimony. Thus, these credibility determinations should be given due deference.

There is substantial evidence in the record to support the ULJ's conclusion that although relator had been harassed, she did not provide management with the opportunity to take timely and appropriate action. Therefore, relator did not quit for a good reason caused by the employer, and unemployment benefits were properly denied.

Affirmed.