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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0841**

Rebecca A. Busho,
Relator,

vs.

Crestridge Holdings Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 17, 2008
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 118 07

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Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

Rebecca Busho appeals, by writ of certiorari, an unemployment law judge's determination disqualifying her from receiving unemployment benefits. Because substantial evidence supports the determination that Busho quit her employment and no exceptions to disqualification apply, we affirm.

F A C T S

Crestridge Holdings Inc., a housekeeping services corporation, employed Rebecca Busho as a general manager from January 2006 to October 2006. After her employment ended, Busho applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. The department determined that Busho was disqualified from receiving benefits because she quit her job without good reason caused by her employer and no disqualification exceptions applied. Busho appealed and a hearing was scheduled.

At the hearing, Busho's supervisor testified that in late October Busho asked if she could switch from a full-time to a part-time schedule. Busho explained that she was getting headaches, was under a lot of stress, and wanted to spend more time with her children. The supervisor granted Busho's request.

A few days later, on October 26, 2006, the supervisor received a phone call from Busho, saying that she could not continue working. According to her supervisor, Busho explained that "her husband was working more hours, and he wanted her to be home with the kids more, and also that her health was bothering her and she was getting stress

headaches.” The supervisor testified that he unsuccessfully tried to convince Busho not to quit and that he later suggested that Busho take a leave of absence, but Busho rejected his suggestions.

The supervisor reported Busho’s hours and unused vacation to Crestridge’s payroll service on November 7 and, on November 10, left a message on Busho’s voicemail asking her to return her keys. On November 13 the supervisor sent Busho her paycheck “for all hours worked through October 26th.”

A coworker testified that on October 26, the same day that Busho called her supervisor to say she could not continue working, Busho had told her coworker that she had been sick in the past and did not want to be at work because the pressure was making her sick again. When the coworker returned to work on the following Monday, October 30, all of Busho’s personal items were gone from the workplace.

Busho testified that she did not quit her job but instead received permission from her supervisor to take an indefinite leave of absence to manage her health problems. The health problems related to Chiari Malformation, a brain condition that affects the spinal column. Busho had surgery to correct the malformation in 2002 and, in October 2006, began suffering relapse symptoms, which included dizziness and sensitivity in the back of her head.

Following the evidentiary hearing, the unemployment law judge determined that Busho quit her job at Crestridge and was therefore disqualified from receiving unemployment benefits. Busho filed a request for reconsideration, and an unemployment

law judge affirmed the disqualification. Busho now petitions for certiorari review of the order of affirmation.

DECISION

We review an unemployment law judge's (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ's decision). In this certiorari appeal, Busho makes three arguments: that the ULJ incorrectly found that she quit her employment; that even if we conclude that she quit, she had good reasons for quitting that were caused by her employer; and that disqualification is improper because her illness made it medically necessary to leave her job. We address each argument.

I

Under the unemployment-benefits statute, “[a] quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2006). The issue of whether an employee quit employment is a question of fact for the decision-maker. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). We view factual findings in the light most favorable to the decision, and we defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ based his determination that Busho quit on the testimony of Busho's supervisor and coworker. The coworker testified that Busho told her that she was quitting on October 26, 2006 because the pressure at work was making her sick and that when the coworker came to work on October 30, all of Busho's personal items were gone. Busho's supervisor testified that Busho called him on October 26 and told him that she could not keep working; that on October 30 he tried to convince Busho to take a leave of absence instead of quitting and that Busho rejected this suggestion; that on November 7, after being unable to reach Busho for several days, he reported Busho's hours to Crestridge's payroll service for her final paycheck; and that on November 10 he left Busho a voicemail message, asking her to return her keys and other company property. An exhibit in the record confirms the supervisor's testimony that on November 13 he sent her a final paycheck with a letter noting that she had voluntarily terminated her employment on October 26. This testimony, which was accepted as credible, provides substantial evidence supporting the ULJ's decision that Busho quit her employment at Crestridge.

Busho contends that she did not quit but rather decided to take a leave of absence. She emphasizes that her supervisor completed a workers' compensation form for her on November 20, indicating that Busho was a full-time employee. She also testified that her supervisor told a workers' compensation interviewer that Busho never quit. In response, Busho's supervisor testified that he did not understand the "ins and outs" of workers' compensation claims and was confused by the questions. Busho contends that she was prejudiced in presenting her argument because the ULJ denied Busho's request to

subpoena the workers' compensation interviewer. The ULJ, however, determined that even if he accepted Busho's account of the discussion between her supervisor and the worker's compensation interviewer as true, it would not affect his conclusion that Busho quit her employment. The ULJ's statement that "[the supervisor's] testimony was more consistent and credible than the testimony of Busho" implies that he accepted the supervisor's testimony on the confusion with the workers' compensation claim. The ULJ also noted that the supervisor's testimony was consistent with Busho's coworker. We will not reweigh evidence on appeal or overrule a ULJ's reasoned credibility assessments. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996) (deferring to credibility assessment); *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (declining to reweigh evidence), *review denied* (Minn. mar. 30, 2004).

Busho also contends that her supervisor could not demonstrate that she quit because he indicated on November 17 that she could return to work if she provided him with a doctor's note. But by November 17 Busho had submitted her notice of quitting. Consequently, Busho is considered to have quit under the unemployment-benefits statute unless the supervisor agreed that Busho could withdraw the notice. See Minn. Stat. § 268.095, subd. 2(c) (stating that "[a]n employee who seeks to withdraw a previously submitted notice of quitting shall be considered to have quit the employment if the employer does not agree that the notice may be withdrawn"). Although the record indicates that the supervisor mentioned that Busho might be able to return to work if she provided him with a doctor's excuse, he did not ultimately agree that her notice of quitting could be withdrawn. In fact, both Busho and the supervisor testified that they

were unable to agree on the terms of employment under which Busho would return to work. Busho demanded more paid sick leave and a raise, and the supervisor clearly informed Busho that he was unwilling to employ her under her proposed terms.

II

Busho next argues that, even if she quit her employment, she is not disqualified from unemployment benefits because she quit for a good reason caused by her employer. Under the employment-benefits statute, an employee who quits her employment is not disqualified from benefits if the employee quit for a good reason that is caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (2006). The determination that an employee quit without good reason caused by the employer is a legal conclusion, which we review de novo. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law); *see also Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (exercising independent judgment on issue of law).

Busho testified that she quit, in part, because she was frustrated with work. She explained that management plans were not being properly implemented, that she felt the employees blamed her for management decisions because she did not speak Spanish and could not communicate with them directly, and that the supervisor and another coworker had betrayed her by discussing work without her. Although these circumstances may well have provided Busho with a personal reason to terminate her employment, these reasons do not equate to good cause for purposes of obtaining unemployment benefits. *See Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 368 (Minn. App. 2000) (referring to

unemployment decisions holding that good personal reasons do not equate to good cause), *review denied* (Minn. Aug. 15, 2000).

A good reason to quit “must be real, not imaginary, substantial not trifling, and reasonable, not whimsical.” *Ferguson v. Dep’t of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). And the conditions must be of the type and degree that would compel an average, reasonable worker to quit and become unemployed. Minn. Stat. § 268.095, subd. 3(a)(3) (2006). “The phrase ‘good cause attributable to the employer’ does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions.” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). We therefore conclude that Busho did not quit for a good reason caused by her employer when she quit because management decisions were not being properly implemented, she felt she was being unfairly blamed for decisions, and she was not included in work discussions.

III

Busho argues that, even if she quit her employment, she is not disqualified from benefits because it was medically necessary for her to quit. An employee who quits her employment is not disqualified from unemployment benefits if she “quit the employment because [her] serious illness or injury made it medically necessary that [she] quit,” provided she requested and was denied reasonable accommodation. Minn. Stat. § 268.095, subd. 1(7) (2006). Whether an employee quit because a serious illness or injury made it medically necessary to quit is a question of law, which we review de novo.

See Madsen v. Adam Corp., 647 N.W.2d 35, 38-39 (Minn. App. 2002) (reviewing this issue de novo as question of law).

We conclude that Busho did not meet the requirements of the “medically necessary” disqualification exception. Busho and her supervisor both testified that the supervisor initially accommodated Busho’s health issues by allowing her to switch to a part-time schedule. Furthermore, the record supports the ULJ’s findings that Busho’s supervisor told her that Busho should take a leave of absence rather than quitting and that Busho rejected this suggestion. And finally, the record contains a letter from Busho’s doctor stating that she “is able to return to work on 11/20/2006.” This evidence demonstrates that Crestridge provided Busho with reasonable accommodations and that it was not medically necessary for Busho to quit.

The record indicates that Busho is pursuing workers’ compensation benefits. The application for workers’ compensation is a matter separate from her application for unemployment benefits and is not part of this certiorari appeal. *Cf. Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 805 n.3 (Minn. 2002) (rejecting contention that decision concerning unemployment benefits undercuts provisions of Workers’ Compensation Act).

Affirmed.