STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0505

Robert Gunderson,
Relator,

vs.

United Sugars Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 24, 2009
Affirmed
Shumaker, Judge

Department of Employment and Economic Development
File No. 378030-3

Robert Gunderson, PO Box 182 – 204 North 2nd Street, Fisher, MN 56723 (pro se relator)

United Sugars Corporation, 1020 Business Highway #2, East Grand Forks, MN 56721 (respondent)

Lee B. Nelson, Department of Employment and Economic Development, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent department)

Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

In this certiorari appeal, relator argues that the unemployment law judge (ULJ) erred in determining that he is ineligible for unemployment benefits because he showed that (1) he quit for a good reason caused by his employer, and (2) his back injury made it medically necessary for him to quit. In addition, relator argues that the ULJ erred in finding that he was not entitled to a new evidentiary hearing based on a medical diagnosis he received from his doctor. Because the record shows that relator did not quit his job for good reason caused by his employer, that it was not medically necessary for him to do so, and that he failed to give any reason why his medical reports were not provided at the initial hearing, we affirm.

FACTS

Relator Robert Gunderson worked as a full-time forklift operator for respondent United Sugars Corp., American Crystal Sugar Company Cooperative (ACS) during its "campaign"[1] from August 2003 through July 2007. Gunderson's job consisted of moving pallets containing 50-pound and sometimes 100-pound bags of sugar with the forklift. Occasionally, if a bag ruptured, Gunderson was required to remove the leaking bag, regardless of where it was located within the pallet. ACS required that all its employees be able to lift the 50-pound bags on their own. However, it was ACS's policy that two people lift the 100-pound bags.

[1] "Campaign" as stated above relates to a seasonal position where employees work from harvest season through processing season. Following the campaign, ACS employees working in the campaign are laid off until the following harvest season.

In April 2007, Gunderson experienced back problems from an incident at work while he was lifting the bags of sugar. He was treated by a chiropractor from April through June 2007. During his treatment, he continued to work in his position with restrictions from his chiropractor. On June 5, 2007, Gunderson was released from his chiropractor's treatment and was permitted to resume his job without restrictions. After his vacation in late July, he decided that he was unable to return to work because of his back injuries. He asked to be laid off but Beth Lopez, ACS's employee-relations coordinator, told Gunderson that his employment status did not permit a layoff. Gunderson then told Lopez that he would have to quit.

In August 2007, Gunderson filed for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible for unemployment benefits because he did not meet the requirements of the medical-necessity exception to ineligibility. Gunderson appealed the ineligibility determination, alleging that he quit his employment for good reason caused by his employer because "[he] asked [his] foreman and supervisor to put [him] on a different job [until his] back healed up, they did not." Following a hearing, the ULJ affirmed the decision that Gunderson was ineligible to receive unemployment benefits.

At the hearing, Gunderson testified that, because ACS was so short staffed, he was unable to find help to lift 100-pound bags and was forced to lift them himself. He also testified that he did not "know if [he] mentioned [his] back or not at [the] time" he quit his job. Gunderson testified that he used his vacation time to rest his back and to determine whether his back injuries would allow him to be a year-round employee. But

he admitted that the chiropractor had "done his job" when he permitted him to return to work without restrictions.

Lopez testified that Gunderson had chosen to become a year-round employee at ACS instead of being laid off at the end of each campaign. She testified that, because of Gunderson's status as a year-round employee, ACS was unable to lay him off upon his request. Following Lopez's testimony, the ULJ asked Gunderson if he had anything to add or whether he agreed with Lopez's testimony. Gunderson responded, "No. No, everything she said was fine."

The ULJ found that Gunderson had in fact hurt his back in April 2007, but that "Gunderson's chiropractor had released [him] to return to work without any restrictions on June 5, 2007 and at the time he quit it was not medically necessary to do so." Gunderson requested reconsideration of the ULJ's decision and submitted additional information regarding the medical diagnosis of his back. Upon reconsideration, the ULJ ruled that he was unable to consider the additional information because Gunderson had not shown why he could not have presented it at the initial hearing and, in any event, it would not necessarily change the outcome of his case. This certiorari appeal followed.

D E C I S I O N

On an appeal from a ULJ's decision, we may affirm the decision of the ULJ; remand the case for further proceedings; or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision: (1) violate constitutional provisions; (2) are in excess of the statutory authority or jurisdiction of the department; (3) were made upon unlawful

procedure; (4) were affected by other error of law; (5) are "unsupported by substantial evidence in view of the entire record as submitted"; or (6) are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008); *see Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (citing this standard of review).

Good Reason Caused by Employer

Gunderson argues that he quit his employment because ACS failed to accommodate his back injury, thereby hindering his ability to perform his job. The ULJ found that the facts did not support that argument. 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).

Under Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007), an applicant for unemployment benefits who quits his job is ineligible for such benefits "unless the applicant quit the employment because of a good reason caused by the employer." A good reason caused by the employer 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 employee; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a) (Supp. 2007).

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). 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).

Whether an employee had a good reason to quit caused by the employer is a question of law this court reviews de novo. *Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 368 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). "The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Gunderson contends that he had no choice but to quit his job because ACS was unable to ensure that he would have help in lifting 100-pound bags of sugar. It is undisputed that earlier Gunderson did in fact suffer from back injuries from heavy lifting on the job. It is also undisputed that Gunderson had since been released by his chiropractor from work restrictions as of the time he quit his job. Notably, Gunderson testified that "The chiropractor [did] his job. He got my back lined up the way it should be and he was done."

Gunderson appears to contend that, following the release from his chiropractor, his back injuries recurred and that ACS failed to accommodate his condition. However, there is no evidence in the record that Gunderson ever notified ACS that he was having back problems again and that accommodations would again be necessary. 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." *Haskins*, 558 N.W.2d at 511; *see also* Minn. Stat. § 268.095, subd. 3(c) (Supp. 2007) (stating 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).

We cannot conclude from the record that Gunderson has shown an "extraneous and necessitous circumstance" created by his employer that would compel the average person to quit. He requested and was given year-round employment status, and, after being denied his layoff request, he voluntarily quit. The ULJ's finding that Gunderson voluntarily quit is supported by substantial evidence in the record.

Medical Necessity

Another exception to an ineligibility determination is medical necessity. An applicant who quit employment will nevertheless be eligible for unemployment benefits if he can show (1) an injury made him unable to do the job, (2) he requested accommodation, and (3) the employer refused to accommodate the injury. Minn. Stat. § 268.095, subd. 1(7) (Supp. 2007).

Gunderson argues that his back injury and ACS's failure to accommodate it made it medically necessary that he quit. Gunderson contends that, after his back injury in April 2007, ACS failed to adhere to the weight restrictions prescribed by his chiropractor. However, a June 5, 2007 medical statement completed by Gunderson's chiropractor stated that it was not medically necessary for Gunderson to quit his employment because

of his back injury, and he was released to resume regular work. Therefore, accommodations from ACS were no longer necessary. Following his work-restriction release, Gunderson never requested, until now, further accommodation, and there is no evidence that ACS ever refused to accommodate him or would have refused had Gunderson made it known that he needed an accommodation. 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.

Therefore, the ULJ did not err in his findings that Gunderson failed to establish the medical-necessity exception to ineligibility for benefits.

Evidentiary Hearing

Finally, Gunderson argues that the ULJ failed to conduct another evidentiary hearing based on new information Gunderson offered regarding the medical diagnosis of his back injury. The law provides in part that "[i]n deciding a request for reconsideration, the unemployment law judge must not . . . consider any evidence that was not submitted at the evidentiary hearing . . . ." Minn. Stat. § 268.105, subd. 2(c) (2008). However,

> [t]he unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id.

"This court will defer to the ULJ's decision not to hold an additional evidentiary hearing." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

On October 23, 2007, as part of his request for reconsideration, Gunderson submitted to the ULJ a medical record pertaining to his back condition. Although the medical record is dated October 10, 2007, it indicates that Gunderson's medical appointment was on October 2, 2007, prior to the initial hearing before the ULJ on October 8. In his request for reconsideration, Gunderson did not offer any reason as to why he failed to offer the medical record at the October 8 hearing. However, even if Gunderson had a plausible excuse for failing to offer the medical record at the hearing, it is not likely that this new evidence would have had any effect on the outcome, considering Gunderson's failure to notify ACS that he had recurring back problems that required accommodations.

Therefore, we defer to the ULJ's decision to deny Gunderson's request for an additional evidentiary hearing to consider evidence that was not offered in the initial hearing.

Affirmed.