STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1430

Tina L. Wandersee,
Relator,

vs.

DDD Motel Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 28, 2009
Affirmed
Lansing, Judge

Department of Employment and Economic Development
File No. 20779365-3

Tina L. Wandersee, 816 South Broad Street, #2, Mankato, MN 56001-4488 (pro se relator)

DDD Motel Corporation. P.O. Box 2268, Mankato, MN 56002-2268 (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, 1st National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

LANSING, Judge

Tina Wandersee appeals, by writ of certiorari, an unemployment-law judge's determination that she is ineligible to receive unemployment benefits. Because Wandersee quit her job without good reason caused by her employer and because the unemployment-law judge did not abuse its discretion by denying her request for reconsideration, we affirm.

F A C T S

DDD Motel Corporation employed Tina Wandersee beginning in October 2007 as a housekeeper and, following a 2008 promotion, as a shift supervisor. Wandersee worked an average of thirty-five hours a week as a shift supervisor.

While Wandersee was working for DDD, a new executive head housekeeper replaced the person who had held that position for approximately twenty years. The change in management resulted in policy and supervisory modifications. Wandersee and other members of the staff did not like the changes, and Wandersee approached DDD's management to express their dissatisfaction. The general manager retired shortly after Wandersee met with him, and the new general manager told Wandersee that he would need time to look into the situation. Wandersee gave notice in March 2008, just one week after speaking with the new general manager.

Wandersee applied for unemployment benefits with the Minnesota Department of Employment and Economic Development. The department determined that Wandersee

was eligible for benefits because the working conditions caused by the employer provided a good reason to quit. DDD appealed, and a hearing was scheduled.

At the hearing, DDD attempted to introduce exhibits, copies of which Wandersee received only that morning. The unemployment-law judge (ULJ) stated that the exhibits would be admitted only if necessary to a full consideration of the issues. The exhibits were not admitted into the record.

Wandersee testified that she quit because of ongoing issues caused by "a major management switch," supervisory problems between the staff and the executive head housekeeper, and Wandersee's role and working relationship with the executive head housekeeper and management. When asked for specific examples of the supervisory or management problems, Wandersee said that she and the other staff disagreed with scheduling decisions, with heightened criticism of their performance, and with a new policy of keeping cleaning supplies in a locked area. A co-worker testified that Wandersee was a hard worker and was respected by other employees. The co-worker also testified that she was personally disappointed by the new executive head housekeeper's decision not to allow the co-worker to attend a daily management meeting.

Three witnesses testified for DDD—the new executive head housekeeper, the new general manager, and the human resources director. The new executive head housekeeper testified that she was thorough in checking the housekeepers' work and that she did hold the housekeepers to a higher standard than the person who had previously held her position. She also said that she told Wandersee that any other employee who was dissatisfied with the changes should speak to her directly, rather than communicating

through Wandersee. The new general manager testified that the previous executive head housekeeper had more relaxed standards than the current one, but the changes were consistent with industry standards.

Following the hearing, the ULJ determined that Wandersee did not quit her job for good reason attributable to her employer, her decision was based on her disagreement with the executive head housekeeper's management style and changes in policy, and she was therefore ineligible to receive unemployment benefits. Wandersee filed a request for reconsideration, and the ULJ affirmed its ineligibility determination. Wandersee, by writ of certiorari, appeals the order of affirmation.

D E C I S I O N

We review a ULJ's decision on unemployment compensation to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). Based on that determination, the statute authorizes the reviewing court to affirm, reverse, or modify the ULJ's decision or to remand for further proceedings. *Id.* In her appeal from the ULJ's denial of unemployment-compensation benefits and reconsideration of that decision, Wandersee raises two issues: lack of substantial evidence to support the ULJ's decision and failure to apply fair-hearing standards.

I

Under the unemployment-benefits statute, an employee is deemed to have quit employment "when the decision to end the employment was, at the time the employment

ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (Supp. 2007). Generally, an employee who quits employment is ineligible for benefits unless an exception applies. *Id.*, subd. 1 (Supp. 2007). Wandersee does not dispute that she quit her employment, but she contends that she had good reason to quit.

"[A] good reason caused by the employer" is an exception to ineligibility based on a voluntary quit and allows an employee to receive unemployment benefits. *Id.*, subd. 1(1). The statute defines "good reason caused by the employer" as a reason that is "adverse to the worker," "directly related to the employment," and that "would compel an average, reasonable worker to quit and become unemployed." *Id.*, subd. 3(a) (Supp. 2007); *see also Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976) (stating that good reason to quit "must be real, not imaginary, substantial not trifling, and reasonable, not whimsical").

Determining whether an employee quit without good reason caused by the employer is a legal conclusion, which receives de novo review. *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). Reviewing courts must defer to the ULJ's credibility assessments and resolution of conflicting testimony. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ concluded that Wandersee quit without good reason because her decision was based on dissatisfaction with the executive head housekeeper's management style and policy changes within her department. The record supports this determination.

Wandersee testified that she disagreed with the executive head housekeeper on scheduling, questioning employees' performances, and locking up supplies. She testified that she thought the actions showed disrespect to the employees and made them feel less trusted. Wandersee's reason for quitting stemmed from her disagreement with the executive head housekeeper's general management decisions and is not a good reason caused by the employer. *See Trego v. Hennepin County Family Day Care Ass'n*, 409 N.W.2d 23, 26 (Minn. App. 1987) (determining that relator's dissatisfaction with interim director was not good reason to quit); *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (determining that relator lacked good reason to quit because of personality conflict with employer).

In her written submissions on appeal, Wandersee suggests that she quit in part because DDD reduced her hours in response to her complaints to management. This claim was raised in the initial unemployment request, but not in the appeal to the ULJ or at the evidentiary hearing. Wandersee provided no support for the claim during the proceedings, and her argument in this appeal is essentially aimed at refuting entries on DDD's proposed exhibits. Because these exhibits were not accepted into evidence they are not part of the record, and the argument on the claimed reduction of hours is similarly not part of the record.

In challenging the adequacy of the evidence, Wandersee contends that the ULJ's decision rested on improper credibility determinations. If the credibility of a party or witness "has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c)

(Supp. 2007). But the ULJ did not make adverse credibility determinations on Wandersee's testimony in concluding that Wandersee was ineligible for unemployment compensation. Instead, the ULJ accepted Wandersee's reasons for quitting as true and determined, as a matter of law, that those reasons were insufficient to establish good cause attributable to the employer. Although Wandersee and DDD apparently dispute the contents of DDD's proposed exhibits, those exhibits were not admitted into evidence, and the ULJ made no credibility determination on this potential dispute. The ULJ accepted Wandersee's testimony on her reasons for quitting and properly applied the law in determining that Wandersee was ineligible for unemployment compensation.

II

The second issue is whether the ULJ abused its discretion by depriving Wandersee of a fair hearing and by denying her request for reconsideration. An evidentiary hearing is "not an adversarial proceeding," and the ULJ "must ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). The ULJ has the obligation to conduct the hearing in a way "that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007). A relator may request reconsideration and an additional evidentiary hearing after the ULJ issues a decision. Minn. Stat. § 268.105, subd. 2(a)(2) (Supp. 2007).

In considering a request for reconsideration, the ULJ cannot consider additional evidence that was not submitted at the hearing unless it is "for purposes of determining whether to order an additional evidentiary hearing." Minn. Stat. § 268.105, subd. 2(c) (Supp. 2007). The ULJ must order an additional evidentiary hearing (1) if the evidence

not offered at the original hearing would change the outcome and the relator shows good cause for failing to submit that evidence or (2) if the evidence submitted at the initial hearing was likely false and affected the outcome. *Id.* We will affirm a ULJ's decision if it is a proper exercise of discretion consistent with the applicable law. *Skarhus*, 721 N.W.2d at 345.

Wandersee contends that the ULJ deprived her of a fair hearing because she had inadequate time to review DDD's exhibits or to call witnesses to rebut them. For three reasons, we reject this argument. First, Wandersee did not request additional time to address the proposed exhibits. *See* Minn. R. 3310.2908 (2007) (stating that ULJ "must reschedule a hearing *at the request of the party* provided grounds for rescheduling have been established" (emphasis added)). Second, the ULJ did not admit the exhibits into evidence. Consequently Wandersee was not prejudiced by the late evidence that was not considered or accepted into the record. *See* Minn. R. 3310.2922 (2007) (stating that "only evidence received into the record of any hearing may be considered by the [ULJ]").

And, finally, Wandersee has failed to show how reviewing these exhibits and presenting additional witnesses would change the outcome. Aside from challenging the unadmitted documents, Wandersee's reconsideration request raises only management-style disagreements between her and the executive head housekeeper, and these disagreements do not establish a good reason to quit that is attributable to the employer. Thus, the ULJ did not err in denying Wandersee's request for reconsideration.

Affirmed.