

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1938**

Carol Hinrichs,
Relator,

vs.

TSS Three LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 8, 2009
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 21123093-3

Douglas P. Johnson, Legal Services of Northwest Minnesota, Box 1883, Bemidji, MN 56601 (for relator)

TSS Three LLC, P.O. Box 230, Wadena, MN 56482-0230 (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Muehlberg, Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

This certiorari appeal is from a decision of an unemployment-law judge (ULJ) that relator is ineligible to receive unemployment benefits because she quit her employment without good reason caused by her employer. We affirm.

FACTS

Relator Carol Hinrichs was employed as the assistant manager of a tobacco superstore operated by respondent TSS Three, LLC. During the morning on Friday, August 1, 2008, store manager Roger Belgarde, Hinrichs's immediate supervisor, came up to Hinrichs and slapped her in the face with a letter-size envelope full of paper. Hinrichs told Belgarde to stop, but he continued slapping her with the envelope five or six times while laughing. The envelope poked Hinrichs in the eye and gave her a paper cut on her nose.

Hinrichs called district manager Donald Koranda that afternoon to complain about the incident and advise him that she was resigning as assistant manager because she could not continue working as Belgarde's assistant. Hinrichs told Koranda that Belgarde hit her in the face with an envelope. Koranda, who was out of the area at the time, told Hinrichs to call him back on Monday morning. Hinrichs agreed to do so and worked her Saturday shift at the store, during which Belgarde was not present.

When Hinrichs called Koranda on Monday morning, Koranda told her that he wanted to have a meeting with her and Belgarde and that Belgarde would let her know when. Hinrichs felt that she was being "further harassed" because she was scheduled to

work the following day and would have to “work alone with [Belgarde] before anything was going to take place.” Koranda set up a meeting for the next morning, but later that afternoon, before being told that a meeting was scheduled, Hinrichs faxed a letter of resignation to Koranda.

After a Department of Employment and Economic Development adjudicator denied Hinrichs’s application for unemployment benefits, Hinrichs appealed, and a hearing was held before a ULJ. At the hearing, Hinrichs described an incident that occurred approximately six weeks earlier, in which Belgarde swung a bank-deposit bag at Hinrichs’s face without provocation and hit her in the chin with enough force to sting. Hinrichs told Belgarde to “never touch [her] in any way, shape, or form ever again.” Hinrichs did not testify that she told Koranda about this incident, but she did testify that, on seven or eight occasions during the previous six months, she had complained to Koranda about Belgarde’s laziness and his overstocking of tobacco products, which caused customer complaints about dry products. Hinrichs also testified that she complained to Koranda about inappropriate sexual comments that Belgarde made about other employees.

The ULJ concluded that Hinrichs was ineligible for unemployment benefits. The ULJ reasoned that, although the envelope-slapping incident “was clearly inappropriate conduct,” Hinrichs had not given her employer a reasonable opportunity to correct the adverse working conditions before quitting because Hinrichs was not willing to wait for the proposed meeting with Koranda and Belgarde. Hinrichs sought reconsideration, and the ULJ affirmed the prior decision. This certiorari appeal followed.

DECISION

Hinrichs challenges the ULJ's determination that she is ineligible to receive unemployment benefits. This court may affirm the decision of a ULJ or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the litigant may have been prejudiced because the findings, conclusion, or decision are affected by an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008); *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). This court views the ULJ's findings of fact in the light most favorable to the decision and will not disturb those findings if there is evidence that reasonably tends to sustain them. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an employee quit without good reason caused by the employer requires the ULJ to draw a legal conclusion, which this court reviews de novo. *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Generally, a person who voluntarily quits employment is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2008). There is an exception to this rule, however, if the person quit because of "a good reason caused by the employer." *Id.*, subds. 1(1), (3) (2008). The ULJ described Belgarde's conduct as "clearly inappropriate," and the evidence supports this characterization. But even if Belgarde's conduct constituted adverse working conditions that would compel an average, reasonable worker to quit employment, the unemployment-insurance statute requires that Hinrichs "must complain to the employer and give the employer a reasonable opportunity

to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(c).

If the employer responds by providing the employee with a reasonable expectation of assistance in eliminating further harassment, the employee must then continue to apprise the employer of additional problems. *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838 (Minn. App. 1987). But if the employer fails to provide an expectation of assistance, no further complaints are necessary. *Id.* at 839; *see Nichols*, 720 N.W.2d at 597 (holding that employee had good reason to quit when, in relevant part, employer failed to take necessary steps to correct continuing harassment after being given reasonable opportunity to do so).

Hinrichs argues that she was not provided a reasonable expectation of assistance because: (1) Koranda failed to give serious, immediate attention to her Friday afternoon complaint; (2) when she called back on Monday, Koranda merely proposed a meeting to be arranged and attended by Belgarde, who had assaulted her; (3) Koranda had failed to respond to her previous complaints about Belgarde; and (4) she would be required to work alone with Belgarde before the harassment would be addressed.

But given the limited information that Hinrichs provided to Koranda when she spoke to him during the two telephone conversations, the ULJ correctly determined that Koranda’s response was timely and appropriate action. Hinrichs did not tell Koranda that she had been injured during the envelope-slapping incident, that she was scheduled to work alone with Belgarde and was afraid to do so, or that the proposed meeting was unacceptable. And although Koranda’s previous lack of response to Hinrichs’s previous

complaints about Belgarde provided some context for her expectation that she would not receive assistance, she had not previously complained that she had been harassed by Belgarde. Koranda told Hinrichs on Monday that he would set up a meeting to address her complaints, and he did set up a meeting. Although the meeting may not have been the response that Hinrichs desired, Hinrichs has not shown that she could not reasonably expect that Koranda's commitment to hold the meeting would provide assistance for her complaints.

Hinrichs also argues that the seriousness of the assault, by itself, gave her good cause to quit because an assault is not simply an "adverse working condition." But even though the assault might be more serious than other adverse working conditions, Hinrichs has not cited any authority that provides for treating an assault differently than another adverse working condition.

Affirmed.