STATE OF MINNESOTA
IN COURT OF APPEALS
A09-130

Becky Sutton,
Relator,

vs.

East Metro Clean N Press Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed November 10, 2009
Affirmed
Hudson, Judge

Department of Employment and
Economic Development
File No. 21235743-3

Becky A. Sutton, 11014 Washington Street Northeast, Blaine, Minnesota 55434-1729 (pro se relator)

East Metro Clean N Press Inc., 186 Marie Avenue East, West St. Paul, Minnesota 55118-4002 (respondent)

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

Considered and decided by Hudson, 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

HUDSON, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit her job without good reason caused by her employer. Because the decision of the ULJ is supported by the evidence and not affected by legal error, we affirm.

FACTS

Relator Becky Sutton worked full time as a store manager for respondent Clean N Press at its Blaine location from October 2003 until September 9, 2008. She quit after her supervisor told her he was closing that store location and offered her instead a floater position, moving between three other locations. The new job assignment would require relator to work at the Vadnais Heights, Arden Hills, and Roseville stores and would continue her pay at the same rate, although she would not retain the manager title. Relator was not given details about whether she would be required to drive between stores in a given day.

Relator applied for unemployment-compensation benefits and was determined ineligible on the ground that the change in working conditions did not have a substantial negative effect, which would cause the average reasonable worker to quit. She appealed that determination, and a hearing was held before a ULJ.

At the hearing, relator testified that she quit her job because the other stores were located further from her home with no increase in pay to offset her extra driving, and

because she did not feel the job offered stability, since the owner has opened and closed many stores. In the unemployment insurance request-for-information form, she stated that the Vadnais Heights location was 14.72 miles from her home and the Roseville location was 11.98 miles from her home, while the Blaine location where she used to work was 5 miles from her home. She stated that she "would no longer be a manager" but did not allege how her job duties would change, other than floating between stores.

The store owner testified that relator's supervisor told the owner that relator would be offered mileage reimbursement between stores, but not extra mileage from the old Blaine location to the new stores. Relator denied that she was offered mileage reimbursement. The store owner testified that the three other stores were "strong, . . . stable stores" and "doing well."

The ULJ read into the record relator's statement, which alleged that: (1) relator quit because she did not like the way the owner runs his business and did not feel it was a stable position; (2) she did not want to be involved with an employer who was apparently not paying overtime pay correctly, in that her overtime did not show up separately on her pay stub but was included in her regular 40-hour week, and she was not paid for some banked overtime hours or any of her 2008 vacation time; (3) the computer that was supposed to do invoicing in the Blaine store was never hooked up; (4) the owner "bought, sold, and closed stores all the time," and this was the second Clean N Press at which she had worked that had been closed down; (5) she could not leave the store for breaks or lunches; and (6) she could not afford to pay for gas to drive to three different locations without a pay increase or job stability. She stated she believed the employer may have

been trying to get her to quit so he would not have to pay her unemployment compensation. The record does not contain evidence that relator complained to her employer about these conditions before the hearing.

The ULJ determined that relator was ineligible to receive benefits because the changes in her conditions of employment were not so severe that they would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment. Therefore, the ULJ determined that relator did not have good reason to quit caused by her employer. Relator filed a request for reconsideration, stating that if she had known she would be reimbursed for mileage, she might not have quit her job. The ULJ affirmed the decision. This certiorari appeal follows.

DECISION

This court will reverse a ULJ's decision if it is unsupported by the evidence or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2008). This court reviews the ULJ's factual findings in the light most favorable to the decision. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee had good reason to quit caused by the employer, so as to be entitled to unemployment compensation, presents a question of law, which this court reviews de novo. *Johnson v. Walch & Walch*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

A person who "quit[s] . . . employment because of a good reason caused by the employer" is eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (2008). A good reason to quit caused by the employer must be a reason: that directly

relates to the employment for which the employer bears responsibility; that is adverse to the employee; and "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) (2008). A good personal reason to quit is not the same as good cause. *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997).

Relator argues that she had good reason to quit caused by her employer because she would have been required to drive among work locations further from her home without compensation for mileage and because she perceived her work situation to be less stable with the closing of the Blaine store. This court has held that an employee's relocation to a different worksite, after a previous location closed, was not good reason to quit caused by the employer, even though the employee, a hairstylist, stated she believed she would experience income loss by losing clients with the relocation. *Johnson*, 696 N.W.2d at 802. We determined that there was "adequate evidence that the replacement employment available to [the worker] was on terms substantially equivalent to those under which she had previously worked." *Id.*; *cf. Rootes v. Wal-Mart Assoc., Inc.*, 669 N.W.2d 416, 419 (Minn. App. 2003) (holding that a demotion with a pay reduction, considerable change in hours, and weekend shifts was a good reason caused by the employer to quit, entitling an employee to unemployment benefits).

As in *Johnson*, this record contains adequate evidence that relator's new job assignment had substantially equivalent terms to her former assignment. Relator testified that with the relocation, she would no longer be termed a manager, but would not experience a reduction in hours or pay. An employee has the right to reject a position

"which requires substantially less skill than she possesses." *Marty v. Digital Equip. Corp.*, 345 N.W.2d 773, 775 (Minn. 1984). But the record does not show that relator's job at the other locations would require substantially less skill.

Relator's increased driving expenses and her apprehension that she could ultimately lose her job because her employer had a past practice of closing stores may constitute valid personal reasons for her to quit, but they do not qualify as reasons 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)(3); *see Johnson*, 696 N.W.2d at 802.

Relator asserts that the ULJ's decision was unreasonable because she may not have quit her job if she had known her employer was willing to pay mileage expenses. The record is unclear on whether relator was offered mileage expenses. But the ULJ determined on reconsideration that her original decision did not depend on mileage compensation and that, "[e]ven without an offer of additional [mileage] compensation, the change in conditions was not so arduous as to compel an average, reasonable worker to quit." The record supports the ULJ's determination.

Relator alleged at the hearing before the ULJ that she was subjected to additional adverse working conditions, including not being allowed to leave the store for breaks, not having an operational in-store computer, and not receiving proper credit for overtime work. But for adverse working conditions to be considered a good reason to quit caused by the employer, an employee must complain about those conditions to the employer and give the employer a reasonable opportunity to correct them. Minn. Stat. § 268.095,

subd. 3(c) (2008). Because the record does not show that relator complained about these conditions to her employer before she quit, they are not considered good reasons to quit caused by the employer.

Relator also submitted to this court financial information on the performance of several Clean N Press stores to support her argument that the Blaine store was performing well before it closed, so she could not tell when other stores might close as well. But because that evidence was not submitted to the ULJ, it does not form part of the record before this court. *See* Minn. R. Civ. App. P. 110.01 (stating that the record consists of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings"); Minn. R. Civ. App. 115.04, subd. 1 (applying rule 110 to certiorari appeals).

Affirmed.