STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1051

Catherine Smithers,
Relator,

vs.

Independent School District No. 477,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 16, 2010
Affirmed
Randall, Judge[*]

Department of Employment and Economic Development
Agency File No. 21479992-3

Catherine M. Smithers, Princeton, Minnesota (pro se relator)

Patricia A. Maloney, Matthew J. Bialick, Ratwik, Roszak & Maloney P.A., Minneapolis, Minnesota (for respondent Independent School District No. 477)

Lee B. Nelson, Amy R. Lawler, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

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

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

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

RANDALL, Judge

Relator argues that an unemployment-law judge incorrectly determined that she was ineligible for benefits because she quit without good reason caused by the employer. Relator argues that she had good reason in the form of a change in her duties and that she gave her employer an opportunity to correct adverse conditions before quitting. We affirm.

FACTS

Relator Catherine M. Smithers sought unemployment benefits after resigning her position with respondent Independent School District No. 477. When she sought benefits, relator asserted that her duties had been drastically changed. Respondent Minnesota Department of Employment and Economic Development issued a determination of eligibility and the school district appealed.

A hearing was held before an unemployment-law judge (ULJ) to address the reason that relator quit. Relator participated on her own behalf and Peter Olson, Princeton High School Principal, and Branden Nelson, Director of Human Resources, participated on behalf of the school district. Nelson testified that relator was the assistant principal's secretary at Princeton High School. Relator testified that her job duties included data reporting for the high school, "along with the MARSS system," which is "Minnesota Automated Reporting . . . the data entry for all the state requirements" related to "state data, students, where they are, federal funding, state funding, anything applying to . . . the funding for the high school." The reporting is done on a computerized system.

While the MARSS reporting was "the majority" of what she did, she had other duties as well, including general secretarial duties such as word processing, answering phones, and assisting students and parents when they came into the administrative office.

In her letter of resignation, relator stated that she was resigning "in light of the decision made by Mr. Olson regarding secretarial duties for the High School main office." In the letter, relator stated that Olson had informed her that another person would be doing the MARSS reporting for the high school, that relator's responsibilities would include, but not be limited to, "receptionist duties (answering the phones and assisting at the front desk)," and that further discussion of her duties would "resume at a later time." She stated in the letter that she had not been included in the discussion regarding "this drastic change." Relator acknowledged that there had been "some inconsistencies regarding the High School enrollment numbers" and that "reporting accurate enrollment is crucial for the District to accurately prepare budget figures." Relator stated that for this reason, she had on several occasions asked that she be granted additional time to accurately report the data, or, at the very least, space away from the traffic of the front office to complete the reporting. Her request was not granted, and relator expressed frustration with doing MARSS reporting in an 11-month position while having reception duties and other reporting duties while other MARSS secretaries in the district held 12-month positions.

The ULJ asked relator if the reason she gave for resigning was the change in her duties from doing MARSS reporting to primarily receptionist duties and she answered, "That's correct." Relator testified that she learned of the change on August 1, a Friday,

when she heard Olson say "since you'll be doing the MARSS reporting now" to another employee, Jackie Lindenfelter.[1] This took relator by surprise. Olson told relator that she would be doing receptionist duties and that they could talk about it at a later time. They did not set up a time to discuss it because Olson had to leave the office. Relator thought about it over the weekend and then gave her letter of resignation on Tuesday, August 5, 2008. Relator was not sure, but thought that Olson had not been in the office on Monday. Relator did not speak with Olson before she wrote her letter of resignation, and did not know exactly what her job duties were going to be. Relator did not tell Olson that she did not want the job change or talk to anyone else about the change before resigning.

The ULJ asked why she did not wait to speak with Olson and relator said that Olson "wasn't even available," and she felt "he's made this decision, there's no recourse here for me." She had spoken with a union representative and the director of finance or business director for the district previously about her frustration with the MARSS reporting, and had also brought up to Olson removing the MARSS duties from her position and rearranging duties between the secretaries. She had been having difficulty trying to keep up with the MARSS reporting and had not been allowed to work overtime or compensation time. When she resigned, relator felt that there had been issues for some time that had not been addressed, and felt "there wouldn't be any change now."

The ULJ asked what she thought would happen if she continued to work there, and relator said she thought "it would be very difficult." She "felt it was a very definite drop

[1] Relator's brief says this person's last name is "Lindenfelser." The hearing transcript and the ULJ's findings of fact spell it "Lindenfelter."

in responsibility." Relator said the duties were not less preferable, but were less demanding, and the skill and responsibility level was lower. She also thought it would be difficult working with Olson when she felt there "wasn't any reason to make this decision in the first place" and felt she and Olson "had a personality conflict more than anything."

The ULJ asked if she quit because the reporting duties were given to Lindenfelter, and relator answered no, that she had quit because the duties were taken from her without "even discussing whoever it's given to." She wanted to discuss rearranging duties, and said that the reporting duties being removed from her and given to a lesser-qualified person "made [her] think that that was more a personality conflict."

Olson testified that in June he had told relator that his plan was to change duties in the fall, but he did not tell her that Lindenfelter would be doing MARSS reporting. The wage and classification of relator's job would not change.

The ULJ concluded that relator was ineligible for benefits because she quit without good reason caused by the employer. The ULJ affirmed on reconsideration and this appeal follows.

D E C I S I O N

This court may reverse or modify the decision of a ULJ if, among other reasons, the ULJ's findings are unsupported by substantial evidence, or the ULJ's conclusion or decision is arbitrary and capricious or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008).

An applicant who quits employment is ineligible for unemployment benefits except in certain circumstances, including that the applicant quit "because of a good

reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2008). A good reason caused by the employer is a reason: "(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2008). Before an employee quits based on adverse working conditions, the employee "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions." *Id.*, subd. 3(c). The school district argues that relator had the burden to demonstrate that she quit for a good reason, but Minn. Stat. § 268.069, subd. 2 (2008) provides that an applicant's entitlement to unemployment benefits must be determined without regard to any burden of proof, and Minn. Stat. § 268.105, subd. 1(b) (2008) provides that an evidentiary hearing is conducted as an evidence-gathering inquiry without regard to any burden of proof.[2]

"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). The reason an employee quit is a question of fact. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d. 380, 382 (Minn. App. 1986) (reviewing for

[2] The 2008 version of the statutes applies in this case, but note that the legislature has since removed the words "without regard to any burden of proof" from these subdivisions, a change applicable to all department determinations and ULJ decisions issued on or after August 2, 2009. 2009 Minn. Laws ch. 78, art. 3, § 5, at 590, § 17, at 597 (effective date), art. 4, § 34 at 615, § 52 at 623 (effective date).

factual support in the record a decision that an employee had a drinking problem but that the problem was not the cause of the employee's separation). This court reviews a ULJ's factual findings in the light most favorable to the decision, giving deference to the ULJ's credibility determinations, and will not disturb a ULJ's findings if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d. 340, 344 (Minn. App. 2006).

Though "[w]hat constitutes good reason caused by the employer is defined exclusively by statute," *Rootes v. Wal-Mart Assocs.*, 669 N.W.2d 416, 418 (Minn. App. 2003), decisions applying the current and former versions of section 268.095 are instructive. Under this court's precedent, good reason to quit "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); *see also Ryks v. Nieuwsma Livestock Equip.*, 410 N.W.2d 380, 382 (Minn. App. 1987) (stating that good cause to quit does not include "mere dissatisfaction with working conditions"). A personality conflict is also insufficient, even when accompanied by the employer making it clear that the employer wanted to "get rid" of the employee, the employer not talking to the employee, and the employer reducing the employee's duties. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699-700 (Minn. App. 1985). In addition, an employee does not have good reason to quit when there is not enough work to keep the employee busy but the employee is paid her full salary. *Id.* at 699.

"[U]nreasonable or excessive demands placed on the employee by the employer are good cause for termination attributable to the employer." *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d. 894, 897 (Minn. App. 1993). In *Rootes*, 669 N.W.2d at 419, this court concluded that substantial adverse changes to employment were present where an employee received a demotion that resulted in reduced wages, changed hours, and weekend shifts.

Here, the ULJ found that relator quit "because of the change in her job duties, because the change was made without input from her and because she felt she would have had difficulty working with Olson after the change was made." These findings are supported by the record. When the ULJ asked relator if the reason she gave for resigning was the change from doing MARSS reporting to doing primarily receptionist duties, she answered, "That's correct." Relator also testified that she quit in part because the reporting duties were taken from her "without even discussing whoever it's given to." And relator testified that she thought it would be difficult working with Olson after the change when she felt that Olson did not have a good reason for making the change in duties and that she and Olson "had a personality conflict more than anything."

The ULJ concluded that relator's reasons for quitting were not good reasons caused by the employer. The ULJ stated that an employer has the right to determine the employee's work assignment, and that the change was not so significant that it would cause the average, reasonable employee to quit.

To amount to good reasons to quit, relator's reasons had to be: (1) directly related to employment and something for which the employer was responsible, (2) adverse to

relator, and (3) something that would compel an average, reasonable employee to quit. The first requirement is met for relator's change in duties because relator's work assignment is related to her employment and something for which Olson was responsible. But the second requirement is not satisfied because the change in duties was not adverse to relator. Unlike *Rootes*, it was not accompanied by any change in hours, classification, or pay. Relator had also sought to have her reporting duties removed in the past, which undermines the assertion that removal of reporting duties from relator's position was adverse to her. The change in duties was therefore not a good reason to quit. The two other reasons that relator quit, that she was not consulted and thought that it would be hard to work with Olson after the change in duties, are also not sufficient under the statute. Though the lack of prior consultation was frustrating to relator, frustrating conditions, without more, are insufficient. *Portz*, 397 N.W.2d at 14. The employer here did not act unreasonably or improperly in reassigning duties without prior consultation. The personality conflict is insufficient under *Bongiovanni*, 370 N.W.2d at 699-700. The ULJ was correct to conclude that relator did not quit for good reasons caused by the employer.

The ULJ concluded additionally that relator did not give the employer an opportunity to address her concerns, which is equivalent to a conclusion that even if there were an adverse condition, it will not serve as a good reason to quit because she did not give the employer an opportunity to correct it. *See* Minn. Stat. § 268.095, subd. 3(c) (stating that employee must give employer opportunity to correct adverse conditions before adverse conditions will be a good reason to quit). The ULJ's conclusion on this

point was also correct. Under the ULJ's valid findings, relator quit because her duties were changed without prior consultation and because she claimed it would have been difficult to work with Olson after the change. Relator did not give the employer the opportunity to address these conditions before she quit. She learned of the change on a Friday and quit the following Tuesday after Olson had been unavailable Friday afternoon and Monday. She did not inform anyone of her dissatisfaction with the change or make any attempt to schedule a time to discuss the matter with Olson. Relator essentially gave the employer no opportunity to correct any claimed problem with the change in duties.

Affirmed.