STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1347

Laura Perry,
Relator,

vs.

Jefferson-Haven Enterprises,
Respondent,

Department of Employment and Economic,
Respondent.

Filed March 30, 2010
Affirmed
Klaphake, Judge

Department of Employment and Economic Development
File No. 22045789-3

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Richard E. Prebich, Law Offices of Richard E. Prebich, Hibbing, Minnesota (for respondent Jefferson-Haven Enterprises)

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

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

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

KLAPHAKE, Judge

Relator Laura Perry challenges the decision of the unemployment law judge (ULJ) that she is ineligible for unemployment benefits because she quit her employment without good reason caused by her employer, respondent Jefferson-Haven Enterprises. Because the ULJ's determination that respondent corrected any adverse working conditions is supported by the record and is not an error of law, we affirm.

D E C I S I O N

This court may reverse the determination of the ULJ if, among other reasons, the decision is affected by an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). We review the ULJ's factual findings in the light most favorable to the decision, and pay deference to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee quit his or her employment is a question of fact determined by the ULJ and we will not disregard factual findings as long as they are substantially supported by the record evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). But whether the employee quit because of a good reason caused by the employer is a question of law that we review de novo. *Id.*

An employee who quits his or her employment is not eligible for unemployment benefits unless the employee 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 defined as one "(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). But "[i]f an applicant was subjected to adverse working conditions by the employer, the applicant 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." *Id.*, subd. 3(c) (2008).

Further, a good reason is one that is "real, not imaginary, substantial, not trifling, and reasonable, not whimsical." *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 511 (Minn. App. 1997) (quotation omitted). Reasonableness is based on the average man or woman, not on "the supersensitive." *Id.* (quotation omitted). When an employee quits because of safety concerns, the ULJ must determine whether these concerns were reasonable "based on the information known to the employee at the time; not whether the conditions were 'in fact' safe." *Id.*

Relator asserts that she had a good reason to quit caused by respondent because respondent failed to respond appropriately and in a timely fashion to her concerns about safety. Relator's assertions are not supported by the record. Relator's concern for her safety arose when a client of respondent, a private social service agency, and the client's boyfriend got into an argument with relator; the two accused relator of taking sides in a dispute among respondent's clients and the boyfriend made an apparent threat of physical violence to relator. Respondent immediately banned the boyfriend from its premises for a period of time, although he was permitted to collect some personal articles after the

ban. Relator was not satisfied with this action; she asked respondent to pay the filing fee for an order for protection, but respondent declined to do so, while encouraging relator to apply on her own. Relator also contacted the MNOSHA Workplace Violence Prevention coordinator, who began an investigation. Respondent cooperated with the coordinator and issued new anti-violence policies, which it also amended at the coordinator's request. Finally, relator began a protracted sick leave.

After relator was medically cleared to return to work, she refused to do so because she continued to be fearful. Respondent's board sent her a letter indicating that she would be considered to have quit if she did not return to work. Instead of returning, relator sent a letter of resignation to the board.

The ULJ found that respondent addressed relator's concerns by banning the client's boyfriend until it determined that he was not an active threat, by formulating an anti-violence policy, and by revising the policy when it was found to be inadequate. These findings are supported by the record. Although safety issues must be viewed on the basis of information known to the employee, *Haskins*, 558 N.W.2d at 511, this was an isolated incident, unlike the ongoing issues in *Haskins*, or the ongoing harassment in *Nichols*, 720 N.W.2d at 595-96 (noting that despite several harassment incidents reported by employee, employer failed to take effective action to end problems).

We conclude that a reasonable employee would not be compelled to quit and become unemployed rather than remaining in the employment because respondent promptly corrected the alleged adverse working condition. Although relator also alludes

to other dissatisfactions with her working conditions, these were not developed in the record and do not provide a good reason to quit caused by the employer.

Affirmed.