

*This opinion will be unpublished and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
A09-951**

Marcia Sydness,
Relator,

vs.

DLORAH Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed April 6, 2010
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 21944009-4

Tracy L. Reid, Central Minnesota Legal Services, Minneapolis, Minnesota (for relator)

DLORAH, Inc., Rapid City, South Dakota (respondent employer)

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

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On certiorari appeal from the decision of the unemployment law judge (ULJ) that
relator was ineligible to receive unemployment benefits, relator argues that the ULJ erred

in (1) concluding that relator did not quit for good reason caused by her employer and (2) excluding the testimony of two witnesses. We affirm.

FACTS

Relator Marcia Sydness began working full time as a financial-aid representative for respondent National American University (NAU) in May 2002. In December 2007, Christie Town became the new campus vice president at NAU. Town required relator to attend approximately eight events outside of her normal work hours. The events, for which relator was paid, were not part of her job description. But when relator complained, Town told her: "I'm the boss."

In July 2008, relator attended a meeting wherein she felt uncomfortable after overhearing Town openly discussing racially and sexually offensive matters with another employee. Shortly after the meeting, Town began telling relator, who frequently took very deep breaths to manage her high blood pressure, that she should not breathe that way. Town also began frequently interrupting relator's work during the day to inquire about financial-aid packets that were to be sent to the corporate office. The interruptions continued throughout the remainder of relator's employment at NAU even though relator had never missed an employment goal during her employment at NAU. Relator further claimed that Town embarrassed her on several occasions and yelled at her on the phone. As a result, relator finally complained about Town's conduct to human resources manager Misti Merriman on September 28, 2008. Merriman told relator that she would look into the matter and get back to her.

On October 6, 2008, relator took medical leave from her employment because of high blood pressure, depression, lower-back pain, and difficulty walking. Relator attributed these conditions to working with Town. On January 29, 2009, when relator was scheduled to return to work, she called the office and spoke with Merriman. Relator was told that her workplace complaint had been discussed with Town, that the complaint was resolved, and that relator should contact Merriman if the problem persisted. Because relator was still concerned that Merriman had not addressed the issues raised by her complaint, relator took the weekend to ponder the situation. In the meantime, Merriman sent relator a letter on January 30, 2009, reiterating that NAU had conducted an investigation into her complaint, had taken responsive action, and hoped that relator would return to work.

Relator called Merriman the following Monday morning and informed her that she would not return to work because she did not believe the situation with Town had been resolved. Relator subsequently established a benefit account with respondent Minnesota Department of Employment and Economic Development and applied for benefits. A department adjudicator determined that relator was ineligible for unemployment benefits because she had left employment for other than good reason caused by her employer. Relator appealed that determination and, following a de novo hearing, the ULJ affirmed the initial determination. Relator filed a request for reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

DECISION

When reviewing the decision of a ULJ, this court may remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008).

I.

Employees who quit employment are ineligible for unemployment benefits, except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (2008). One exception applies if the applicant quit “because of a good reason caused by the employer.” *Id.*, subd. 1(1). A “good reason” 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). In addition, adverse working conditions may be considered a good reason to quit only if the applicant “complain[ed] to the employer and [gave] the employer a reasonable opportunity to correct the adverse working conditions.” *Id.*, subd. 3(c) (2008).

Relator argues that the ULJ erred in concluding that she did not quit for good reason caused by NAU. To support her claim, relator points to the many examples of conduct by which Town made her employment at NAU intolerable. The ULJ recognized that Town made work difficult for relator. Nevertheless, the ULJ determined that “assuming an average, reasonable worker would choose” to become unemployed, relator

“is still ineligible for unemployment benefits” because relator did not give NAU a reasonable opportunity to correct the problem. Thus, the ULJ concluded that relator “did not quit for good reason caused by [NAU].”

Relator argues that she gave NAU a reasonable opportunity to correct the problem, but NAU failed to correct the conditions that led her to quit. We disagree. The record reflects that relator complained on September 28, 2008, then went on medical leave about a week later. When relator contacted Merriman in January 2009, she was assured that the issues had been discussed with Town and that the matter was resolved. Relator was also sent a letter stating that NAU had conducted an investigation, had taken responsive action, and hoped that relator would return to work. Nevertheless, relator refused to return to work. Although relator claimed that she was aware that nothing had changed, relator had no legitimate reason to dispute NAU’s claim that the problems had been resolved because she never returned to work. Minnesota law mandates that adverse working conditions may be considered a good reason to quit only if the applicant “complain[ed] to the employer and [gave] the employer a reasonable opportunity to correct the adverse working conditions.” Minn. Stat. § 268.095, subd. 3(c). Relator gave NAU the reasonable opportunity to correct the problem, but then unreasonably refused to return to work after NAU reported that it had corrected the problem. Relator’s speculative belief that NAU failed to adequately respond to her complaint is not supported by the record.

Relator further argues that the ULJ erred in denying her benefits because she quit her employment due to medical necessity. An applicant is qualified to receive

unemployment benefits if “the applicant quit the employment because the applicant’s serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform[ed] the employer of the serious illness or injury and request[ed] accommodation and no reasonable accommodation [was] made available.” Minn. Stat. § 268.095, subd. 1(7).

Here, the record reflects that relator suffered from high blood pressure, depression, and lower back pain. Relator attributed these problems to her employment at NAU and claimed that she quit to protect her health. But relator failed to offer persuasive evidence that it was medically necessary for her to quit her employment. Moreover, there is nothing in the record indicating that relator requested an accommodation from NAU for her medical condition, or that she gave NAU the opportunity to accommodate her. *See* Minn. Stat § 268.095, subd. 1(7). Therefore, the ULJ did not err in concluding that relator did not quit for good reason caused by her employer.

II.

At the de novo hearing, relator offered the testimony of two witnesses who were prepared to testify in support of relator’s claim that she had good reason to quit because of the conditions of the workplace. The ULJ ruled that she would not hear the testimony from the two witnesses because she felt their testimony would be merely repetitious of relator’s testimony and not relevant to the proceedings. Relator argues that the ULJ’s decision was erroneous because the testimony was relevant to the working conditions and the investigation conducted by NAU concerning Town’s behavior.

Minnesota law provides that

[t]he [ULJ] must ensure that all relevant facts are clearly and fully developed. The department may adopt rules on evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The department has discretion regarding the method by which the evidentiary hearing is conducted.

Minn. Stat. § 268.105, subd. 1(b) (2008). The ULJ “must exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2007). “A judge may exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious.” Minn. R. 3310.2922 (2007).

Here, relator testified at length as to the adverse working conditions, and the ULJ accepted her testimony as fact. Additional testimony on the issue would have been unnecessary and unduly repetitious. Therefore, the ULJ did not err in excluding relator’s witnesses’ testimony.

Affirmed.