This opinion will be unpublished and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
A09-1626

Margaret Aitkens,
Relator,

vs.

County of Washington,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 20, 2010
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 22323686-3

Margaret L. Aitkens, Mahtomedi, Minnesota (pro se relator)

Douglas H. Johnson, Washington County Attorney, James C. Zuleger, Assistant County Attorney, Stillwater, Minnesota (for respondent employer)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Ross, Judge.

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

ROSS, Judge

Margaret Aitkens appeals from an unemployment law judge's determination that she is ineligible for unemployment benefits because she quit employment with Washington County without good reason caused by the county. Because Aitkens resigned after the county corrected the condition that she complained about, we affirm.

FACTS

Margaret Aitkens was a public information coordinator for Washington County. Molly O'Rourke was Aitkens's direct supervisor. Aitkens claims that O'Rourke disliked her and "did what she could to force [her] out." Aitkens describes a "laundry list of things" that O'Rourke did to create a hostile environment for her, including setting unrealistic deadlines, structuring her position to create "no-win situations," applying different standards to her, demoting her, formally reprimanding her, and writing two negative performance evaluations based on false accusations.

Aitkens challenged O'Rourke's reprimand by initiating a two-step grievance process. After the first step, the county assigned Aitkens to a different supervisor. Aitkens viewed the change as a demotion even though her job title and salary did not change. Washington County characterized it as "a change in the reporting relationship," not a demotion. The second step was a hearing on February 25, 2009, before the county administrator and the director of human resources. Although Aitkens provided "a huge volume of information" at the hearing to support her claim and the county had only 15 days to respond, Aitkens did not wait; she resigned two days later on February 27.

Aitkens applied for unemployment benefits, but the Department of Employment and Economic Development (DEED) determined that she was ineligible because she quit her employment without a good reason caused by her employer. Aitkens appealed that determination, and an unemployment law judge (ULJ) concluded that even if Aitkens's complaints about O'Rourke had merit, she resigned without giving the county a reasonable opportunity to correct the problem. Aitkens requested reconsideration and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

Aitkens challenges the ULJ's decision that she is ineligible for unemployment benefits. This court may remand, reverse, or modify the decision of a ULJ if the relator's substantial rights may have been prejudiced because the findings, conclusion, or decision is, among other things, made upon unlawful procedure, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). Aitkens argues that the ULJ's findings are not supported by the record, that the record establishes that she had good reason to quit and that she gave the county reasonable opportunity to correct the adverse conditions, and that the evidentiary hearing procedure contributed to arbitrary and capricious findings. We review findings of fact in the light most favorable to the ULJ's decision, give deference to the ULJ's credibility determinations, and rely on the ULJ's findings when the evidence substantially supports them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Aitkens acknowledges that she quit her employment. But she argues that because she quit for good reason caused by the county, she is eligible for benefits. A person who

quits employment is ineligible for unemployment benefits unless, among other exceptions, she quit because of a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). A good reason to quit caused by the employer is one that is "directly related to the employment and for which the employer is responsible," is adverse to the employee, and "would compel an average, reasonable worker to quit and become unemployed." Minn. Stat. § 268.095, subd. 3(a) (2008). But an employee "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). The determination that an employee quit without good reason attributable to the employer is a legal conclusion, which this court reviews de novo. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Aitkens argues that she was compelled to resign because of O'Rourke's alleged hostile treatment of her. Although the ULJ concluded that Aitkens quit without good reason caused by the county, he did not make a finding of why she quit. His decision does not accurately describe or analyze Aitkens's claims. It focuses on Aitkens's quitting before the grievance process was complete but overlooks that Aitkens insisted that her grievance had no direct relation to her decision to resign. Aitkens argued to the ULJ, and argues again to this court, that her grievance only challenged the reprimand and that her resignation decision did not hang on whether the county sustained it.

The ULJ must ensure that all relevant facts are clearly and fully developed. Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). And the ULJ's legal conclusions must be based on findings supported by substantial evidence. *Nichols*, 720 N.W.2d at 594. The ULJ erroneously based his conclusion that Aitkens failed to provide a reasonable opportunity to correct allegedly adverse conditions on the fact that she resigned before the grievance process was complete. Aitkens's resigning before the end of the grievance process is irrelevant to the section 268.095 analysis because the challenged reprimand was not the allegedly adverse condition that led to Aitkens's resignation. Aitkens consistently stated that she resigned due to the overall hostile work environment she allegedly endured over a four-month period. The reprimand was only one example of that alleged hostility. The ULJ was free to consider the credibility of Aitkens's explanation for resigning, but his order makes no credibility determinations. The ULJ did not find her explanation to be incredible and no evidence in the record contradicts her explanation.

But despite the ULJ's somewhat erroneous analysis, we agree with the conclusion that Aitkens resigned without giving the county a reasonable opportunity to correct any adverse working conditions. All of Aitkens's complaints of a hostile work environment involved her supervisor Molly O'Rourke. Aitkens complained to another supervisor and to human resources about her working relationship with O'Rourke. The county took corrective action by reassigning Aitkens to a different supervisor. Aitkens worked under her new supervisor for just one week before she resigned.

Aitkens argued that the reassignment was really a demotion. A demotion can be a good cause for quitting in some circumstances. *See Wood v. Menard, Inc.*, 490 N.W.2d 441, 443 (Minn. App. 1992) (stating that a substantial pay reduction or an unreasonable change in terms of employment can give an employee good cause for quitting). The ULJ did not decide whether the reassignment was a demotion. In many situations this omission would lead us to remand for additional findings, but not here because Aitkens testified that she did not resign due to her alleged demotion.

Aitkens argues instead that the assignment to the new supervisor simply could not resolve the hostility issues because her new supervisor reported directly to O'Rourke. But this is merely a prediction—not a fact. Aitkens gave no examples of continued difficulty during her one week under new supervision. To the contrary, she testified that nothing happened between her second grievance hearing and her resignation that caused her to quit, and this is during the period in which she was reporting to the new supervisor. Aitkens had apparently already made up her mind to resign, as she testified that she "already knew [she] was not going to make it." Assuming without deciding that an employee's speculative predictions of future adverse working conditions might lead a reasonable employee to quit, Aitkens's argument still fails. Even if we credit her prediction that conditions would not improve under the new assignment, she failed to complain about the reassignment to allow the county a chance to offer a better solution. Aitkens's decision to resign just one week after being reassigned from O'Rourke, the only source of her hostile-work-environment complaints, unreasonably disregarded the county's corrective action and did not allow the county a reasonable opportunity to

correct any hypothetical adverse working conditions that Aitkens predicted would occur after the reassignment. Aitkens therefore did not quit because of a good reason caused by the employer and is ineligible to receive unemployment benefits.

Aitkens also contends that irregular procedure during the hearing "contributed to arbitrary and capricious findings." Aitkens complains that the ULJ interrupted her more than 60 times, that he had not yet read the approximately 100 pages of supporting documents she submitted, and that it seemed he was inattentive, absent, or asleep. Aitkens's arguments, which she did not raise during the hearing or when she asked the ULJ to reconsider his determination, are not persuasive.

The hearing transcript does reveal several instances when Aitkens and the ULJ talked over one another. But it appears this occurred when the ULJ was attempting to redirect the testimony to the relevant facts. The ULJ must "exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing" and "ensure[s] that relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2009). It does not appear that the alleged interruptions prevented Aitkens from presenting evidence or argument, and she asked no questions and gave no additional response when the ULJ offered her the chance to do so both at the end of her testimony and at the end of the hearing.

Aitkens's complaint that the ULJ did not preview the nearly 100 pages of documents she submitted is not compelling because she waited until the day before the hearing to submit them. She did not comply with her obligation to submit her exhibits "no later than five calendar days before the scheduled time of hearing." Minn. R.

3310.2912 (2009). Anyway, the documents are in the record and we presume they were reviewed as necessary by the ULJ after the hearing and before the decision. And even if the ULJ did not review them, Aitkens points us to nothing in the documents that would justify a different outcome. Finally, there is simply no basis in the record to support Aitkens's argument that the ULJ was inattentive, absent, or asleep.

Affirmed.