STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1959

Peter Bloedoorn,
Relator,

vs.

Minnesota State Housing Finance Agency,
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed August 17, 2010
Affirmed
Stoneburner, Judge

Department of Employment and Economic Development
File No. 227536523

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Minnesota State Housing Finance Agency, St. Paul, Minnesota (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 Connolly, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

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

STONEBURNER, Judge

Relator challenges the decision of the unemployment law judge that he was ineligible for unemployment benefits because he quit his employment without good reason attributable to his employer. Because relator failed to report what he now alleges was harassment or retaliatory conduct or to give his employer an opportunity to correct the problem, we affirm.

FACTS

Relator Peter Bloedoorn was employed by respondent Minnesota State Housing Finance Agency (MHFA) from March 1997 until his resignation in August 2008. In February 2007, Bloedoorn reported to senior management that proposed changes in MHFA loan-purchasing procedures would result in violation of Internal Revenue Service (IRS) tax-exemption standards. Bloedoorn states that he was "rebuffed summarily." Soon after, he took an unrelated six-week medical leave. When he returned, Bloedoorn experienced retaliation for his report of potential violations, including having his office moved to an inconvenient location and having his pay retroactively reduced. When his inquiries about the pay reduction were not answered, Bloedoorn filed a grievance with his union and the Minnesota Department of Human Rights. In October 2007, Bloedoorn was awarded retroactive restoration of his pay and compensation for previously serving as a supervisor without receiving the requisite raise, and his desk was moved back to its original location.

Bloedoorn asserts that the retaliation and harassment continued after his successful grievance. He was relieved of responsibilities and duties, his work was more closely supervised and more thoroughly critiqued, and he was given accounting work that he was not qualified to do, although he completed all of his work in a timely manner.

In August 2008, Bloedoorn told his supervisor, Karmel Kluender, that he needed to take vacation time in late August to help his 88-year-old mother complete the sale of her home and move into his home. Bloedoorn followed informal procedures for requesting time off that had been in place for the past eleven years, despite more formal requirements for requesting leave contained in the collective bargaining agreement (CBA). When, in early August, he first discussed the need for vacation at the end of August, Kluender did not give any caveats or instructions about what Bloedoorn would need to do before he could use his available vacation time. But, on the day Bloedoorn planned to leave, Kluender refused to give the requisite written approval until Bloedoorn reformatted a report that he had submitted that day. Bloedoorn, who had not been trained to format the report as required by Kluender, offered to work on the report, which was not urgent, over the weekend, after he had assisted his mother. Kluender refused and would not sign the vacation request. Bloedoorn contacted the union representative who suggested that he resubmit his request under the Family and Medical Leave Act (FMLA). Bloedoorn immediately did this, but the FMLA request was rejected, whereupon Bloedoorn resigned.

Bloedoorn's application for unemployment benefits was denied. He appealed and participated with counsel in a telephone hearing before the unemployment law judge

(ULJ). MHFA did not participate in the hearing except by submission of a letter describing its version of the events that led to Bloedoorn's resignation and asserting that his resignation was voluntary. The ULJ found that although Bloedoorn had experienced retaliation in 2007, Kluender's actions on the day of Bloedoorn's resignation had "some justification" and her insistence that the report be in a different format was not unreasonable. The ULJ denied Bloedoorn's request for unemployment benefits citing Minn. Stat. § 268.095, subd. 3(c) (2008), for the proposition that an applicant subject to adverse working conditions by an employer must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before those conditions may be considered a good reason caused by the employer for quitting. Bloedoorn requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal followed.

D E C I S I O N

This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008) (articulating reasons for remand, reversal, or modification). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who quits employment because of a good reason caused by the employer is not disqualified from unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2009). Whether an employee had good reason to quit caused by the

employer presents a question of law, which we review de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

A "good reason caused by the employer for quitting" is a reason that is adverse to the worker, directly related to his or her employment, for which the employer is responsible, and which "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subds. 3(a)(1)–(3) (2008). For adverse working conditions to be considered a good reason to quit caused by the employer, an applicant "must complain to the employer and give the employer a reasonable opportunity to correct [those] conditions." *Id*., subd. 3(c) (2008). Harsh or abusive harassment may constitute good reason to quit caused by the employer if the employer knows of the harassment and fails to take adequate measures to prevent it. *Larson v. Dep't of Econ. Sec.*, 281 N.W.2d 667, 669 (Minn. 1979); *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 596–97 (Minn. App. 2006).

Bloedoorn argues that he had good reason to quit because of the history of workplace retaliation, which began after he reported his concerns that MHFA was out of compliance with IRS tax-exemption standards and caused him to believe his employment situation was untenable. Bloedoorn also argues that Kluender's requirement that he reformat a non-urgent report before he could take previously requested vacation time necessary to help his mother is an example of MHFA's continuing workplace harassment. He asserts that Kluender's requirement was unreasonable because she knew he did not have the training to reformat the report in the timeframe demanded, she had

not placed any conditions on Bloedoorn's ability to take time off when he first gave notice earlier that month, and her requirement was incongruent with how vacation leave was normally handled. Bloedoorn claims that the retaliation and harassment continued even after his successful union grievance in 2007.

An employer's unreasonable demands may be a good reason to quit. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (reversing determination that employee was partially disqualified from unemployment benefits when "employer made unreasonable demands of employee that no one person could be expected to meet"); *see also Porrazzo v. Nabisco, Inc* ., 360 N.W.2d 662, 663–64 (Minn. App. 1985) (concluding that a substantial increase in an employee's work hours without extra pay for all of the extra hours the employee was required to work is a good reason to quit). Good reason to quit does not extend to irreconcilable personality conflicts, to an employee's general dissatisfaction, or to frustration with the employment. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). The ultimate question is whether the employer's demands were excessive or unreasonable. *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 897 (Minn. App. 1993).

Bloedoorn presented evidence of workplace retaliation and a continued hostile work environment even after his successful grievance, but there is no evidence that he reported such conduct before his resignation. The ULJ correctly noted that for adverse working conditions to be considered a good reason to quit caused by the employer, an applicant "must complain to the employer and give the employer a reasonable opportunity to correct [those] conditions." Minn. Stat. § 268.095, subd. 3(c).

Bloedoorn cites *Nichols*, 720 N.W.2d at 597, for the proposition that an employee has good cause to quit when being subjected to workplace harassment. But the appellant in *Nichols* informed her employer of the harassment, and the employer failed to take an effective action to correct the harassment. 720 N.W.2d at 597. Only then did the appellant in *Nichols* quit her employment. *Id*. The appellant in *Nichols* proved both harassment and reporting in compliance with the statute.

Bloedoorn argues that, by contacting his union representative, and by attempting to request time off under FMLA, he "exhausted every remedy he was aware of before resigning." But Bloedoorn did not report the conduct to his employer and never filed a formal grievance for the retaliatory conduct which he claims took place after 2007. Bloedoorn argues that it would have been "impracticable and unreasonable" for him to file a union grievance when he had only a few days to move his elderly mother. But Bloedoorn has not established that he was forced to resign before he left employment to assist his mother. We are not unsympathetic to the situation Bloedoorn found himself in on the day of his resignation, but the statutory mandate is clear: in cases involving harassment, in order to establish that a resignation was for good reason attributable to an employer, an applicant must have complained to the employer and given the employer an opportunity to correct the complained-of conditions. Further, Bloedoorn's argument that he had good reason to quit because MHFA's denial of his vacation request violated the CBA is meritless. Bloedoorn concedes that he did not follow the CBA requirements for

vacation approval. We conclude that the ULJ correctly determined that Bloedoorn was not entitled to unemployment benefits.

Affirmed.