**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-2172**

Sheila Truebenbach,
Relator,

vs.

Bethlehem Child Care Center,
Respondent,

Department of Employment and Economic Development,
Respondent

**Filed October 19, 2010**
**Affirmed**
**Ross, Judge**

Department of Employment and Economic Development
File No. 22917889-3

Diane B. Bratvold, Briggs and Morgan, P.A., Minneapolis, Minnesota (for relator)

Bethlehem Child Care Center, Mankato, Minnesota (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 Minge, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

**ROSS**, Judge

Sheila Truebenbach appeals from an unemployment law judge's decision holding her ineligible to receive unemployment benefits because she quit her job at a childcare center without a good reason caused by the center. She argues that her employer's failure to respond properly to her reports of a coworker's rough treatment of children afforded her a good reason to quit. Because we conclude that a reasonable employee in Truebenbach's position would not have been compelled to quit, we affirm.

## FACTS

Sheila Truebenbach was a lead teacher at Bethlehem Child Care Center from January 5 to June 5, 2009. Truebenbach received a performance evaluation from the center's executive director, Marsha Madigan, on May 28, 2009. After receiving the evaluation, Truebenbach complained to Madigan that in April she had seen another teacher dragging a toddler by the arm away from a climbing toy. Madigan told Truebenbach that she would talk to that teacher. Madigan questioned the teacher, who denied ever grabbing or dragging the child. Truebenbach quit on June 5 allegedly because she saw that same teacher forcibly feeding a child during lunch by plugging his nose and making him eat green beans.

Truebenbach applied for unemployment benefits through the Department of Employment and Economic Development (DEED), but the department determined that she was ineligible because she quit without a good reason caused by her employer. Truebenbach appealed. An unemployment law judge (ULJ) conducted a hearing and

took testimony from Truebenbach, Madigan, the teacher who Truebenbach had accused of being rough, and another Bethlehem employee who had been present when the alleged force-feeding occurred. The ULJ concurred with DEED's ineligibility determination. Truebenbach requested reconsideration, and the ULJ affirmed his decision.

Truebenbach appeals by writ of certiorari.

**D E C I S I O N**

Truebenbach asks this court to reverse the ULJ's determination that she is ineligible for unemployment benefits. This court may remand, reverse, or modify a ULJ's decision if the relator's substantial rights were prejudiced by findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made upon unlawful procedure, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2008).

An applicant who quits her employment generally is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). But an exception to ineligibility applies when "the applicant quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1). The ULJ determined that Truebenbach was ineligible for benefits because she quit her job without a good reason caused by Bethlehem, and Truebenbach challenges the ULJ's conclusion that she lacked a good reason to quit. Whether an employee had a good reason to quit is a question of law reviewed de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

Truebenbach asserts that a childcare employer's failure to properly respond to an employee's good-faith report of child abuse is a good reason to quit. A good reason for

quitting is a reason that (1) directly relates to the employment and for which the employer is responsible, (2) is adverse to the worker, and (3) would compel an average, reasonable worker to become unemployed. Minn. Stat. § 268.095, subd. 3(a) (2008). Truebenbach argues that the first two elements are satisfied because she witnessed the force-feeding while working as a teacher in Bethlehem's toddler room. Because DEED does not challenge these premises, we accept them for the purposes of this opinion. Truebenbach also asserts that a reasonable childcare worker would have quit after reporting the incident and receiving an inadequate response from her employer. The argument is not convincing. Because the circumstances in this case would not have compelled a reasonable childcare worker to quit, the ULJ correctly determined that Truebenbach quit without good reason.

Truebenbach points out that illegal conduct by an employer may provide a reasonable basis to quit. This may be so in some circumstances. *See Kahnke Bros., Inc. v. Darnall*, 346 N.W.2d 194, 196 (Minn. App. 1984) ("An employer who violates a state law in its treatment of its employees . . . furnishes the employee with the requisite good cause for quitting."). But we need not consider whether this is such a circumstance; Truebenbach inadequately argues and provides no authority holding that a childcare center's failure to respond to an employee's reports of a coworker's child abuse is illegal. Truebenbach cites the statute making childcare workers mandatory reporters of abuse, *see* Minn. Stat. § 626.556, subd. 3(a)(1) (2008), but she stops short of specifically asserting that Bethlehem's conduct was illegal under that statute, and she does not explain how an

obligation to report creates a duty to quit. She instead argues vaguely that her employer's response to her report was "not . . . appropriate."

Truebenbach fails to establish either that she witnessed any conduct mandating her to report abuse, or that Bethlehem's response was inappropriate and caused her to quit. Truebenbach testified that she witnessed the teacher treat children roughly on three occasions, twice in April and once in June 2009. But the ULJ implicitly found that Truebenbach did not actually witness any rough treatment of any child. Even if we accept Truebenbach's testimony that she witnessed abuse, her testimony does not establish that Bethlehem responded inappropriately. In the first April incident, the teacher allegedly hit a child on the forehead with the palm of her hand, knocking him to the floor. Truebenbach testified that after she reported this incident to Madigan, Madigan said that she would talk to the teacher and "take care of it." In the second April incident, which occurred about a week after the first, the teacher allegedly dragged a child away from a playset by the arm. Truebenbach testified that she did not immediately report this incident to Madigan because she did not think Madigan would do anything about it.

The third and final incident, which directly led to Truebenbach's quitting, occurred on June 5. Truebenbach testified that she saw the other teacher plug a child's nose to force him to open his mouth and eat green beans:

> She reached over the table to put the beans in the child's mouth. The child did not want them. He refused. So she still tried to do it. And then she got up and walked over to him and sat next to him and plugged his nose as he was crying and putting the beans in his mouth.

After seeing the teacher try to force-feed the child, Truebenbach left the room and told the assistant director, Beth Troutner. Troutner called the accused teacher into her office. The teacher returned shortly and told Truebenbach, "I was only doing what the [child's] parent told me to do." Truebenbach then decided to leave. On her way out, she encountered Troutner, who said, "I think you should grow up." Truebenbach replied, "You know what, I'm not working here no more." She handed Troutner her building key and left.

The ULJ was doubtful about Truebenbach's testimony, but even under Truebenbach's version of events, there is nothing to suggest that Bethlehem responded inappropriately to her reports. According to Truebenbach, when she reported the forehead-striking and force-feeding incidents, Bethlehem investigated. Bethlehem evidently did not credit Truebenbach's allegations, and no law prohibited Bethlehem from believing the accused teacher and disbelieving Truenbenbach. And even if Bethlehem's response was "inappropriate," it did not provide Truebenbach with a good reason to quit.

We clarify that the question before us is not whether mistreatment occurred or whether observing mistreatment, by itself, would diminish a childcare worker's desire to remain employed. And we assume, without so holding, that a reasonable childcare worker would not tolerate continued employment in a facility where serious child mistreatment is recurring and ignored, or where serious mistreatment reports go unexplored. But the findings and record here do not describe such an environment. By Truebenbach's own account, Bethlehem inquired about her complaints but did not find

that any mistreatment had occurred; it did so by considering differing versions of two incidents and by disbelieving the version that suggested mistreatment. We focus instead on the essence of Truebenbach's claim, which is that a reasonable childcare worker in her position—one who believed that a coworker had twice roughly treated children in the manner reported and that her employer was not taking her reports seriously—would be compelled to quit.

We are therefore more concerned with Truebenbach's relatively low degree of concern about the mistreatment than with Bethlehem's bases for disbelieving that it occurred. The record reveals an inconsistency that undermines Truebenbach's claim that Bethlehem's failure to respond to her coworker's alleged improper behavior would compel a reasonable employee to quit. The ULJ disbelieved Truebenbach's contrary testimony and found that Truebenbach waited until after the May 28 staff evaluation to report either of the April incidents and that she reported only one of them. This report closely followed her performance evaluation, and, even under her own version of events, Truebenbach never reported the arm-dragging incident. It is incongruent for Truebenbach to assert that the force-feeding incident reasonably compelled her to quit after she observed two prior incidents of alleged abuse without promptly reporting them. Because Truebenbach did not deem the alleged mistreatment sufficiently urgent or serious to warrant her prompt and complete reporting, she cannot logically maintain that Bethlehem's less-than-passionate response to her reporting was, for her, an unendurable employment-ending offense.

Because Truebenbach has failed to establish that a reasonable employee in her position would have quit, she lacked a good reason to quit. And because Truebenbach quit without a good reason caused by Bethlehem, she is ineligible to receive state unemployment funds.

**Affirmed.**