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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1726**

Angela Kirchner,
Relator,

vs.

Superior Hair, Ltd.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 5, 2011
Affirmed
Willis, Judge***

Department of Employment and Economic Development
File No. 25519546-3

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Superior Hair, Ltd., Duluth, Minnesota (respondent)

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Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and Willis, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WILLIS, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she is ineligible for unemployment-compensation benefits because she quit her employment without a good reason attributable to her employer and no exception to ineligibility applies. We affirm.

FACTS

Great Clips for Hair employed relator Angela Kirchner as an assistant manager from April 2000 to June 15, 2010. During that time she worked 28 to 36 hours per week. In March 2010, Kirchner became ill, took a leave of absence, and was removed from the regular work schedule. In April 2010, Kirchner recovered from her illness and began picking up shifts at the salon. By the end of April, Kirchner was picking up enough shifts that she was again working between 28 and 36 hours per week.

In May 2010, Kirchner told her manager that she was being approved for an in-vitro-fertilization (IVF) process. Kirchner said that she would need time off to go to medical appointments and to go through the IVF process. Her manager said that Great Clips would work with her to accommodate the process. In June, Kirchner told her manager and the owner of Great Clips that she was going to begin the IVF process on July 1, 2010, and would need time off to travel to appointments and time off for any negative reactions to IVF medications. Kirchner also said that she was thinking about taking another leave of absence.

Kirchner, the salon's manager, and the salon's owner met on June 15, 2010, to discuss Kirchner's work schedule. The owner told Kirchner that Great Clips would not approve a leave of absence for IVF treatments and requested that Kirchner commit to resuming a regular work schedule rather than being an on-call employee. Kirchner said she was not able to return to her regularly scheduled position because of her IVF treatments and signed a form stating, "I voluntarily terminate my employment as of 6/15/2010." The reason for her voluntary termination states, "I cannot commit to what is being asked of me at this time due to personal reasons," but "I am available to be on call." Kirchner did not call Great Clips to pick up any shifts after June 15, 2010.

Kirchner applied for unemployment benefits and the Minnesota Department of Employment and Economic Development determined that she was eligible for benefits. Great Clips appealed the department's eligibility determination to a ULJ, who held an evidentiary hearing and issued a decision reversing the department's determination. The ULJ determined that Kirchner quit her employment without a good reason attributable to Great Clips and that the serious-illness exception to ineligibility does not apply. Kirchner requested that the ULJ reconsider, and the ULJ issued an order affirming his decision. Kirchner now appeals by writ of certiorari, challenging the ULJ's rulings that she quit her employment, that she quit without a good reason caused by Great Clips, and that the serious-illness exception to ineligibility does not apply.

DECISION

In our review of an unemployment-compensation determination, we may affirm a ULJ's decision, remand for further proceedings, or reverse or modify the decision if the

findings, inferences, conclusions, or decision is affected by an error of law or is unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2010).

An employee who quits employment is ineligible for unemployment-compensation benefits unless the employee quit “because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1) (2010). An employee has quit employment if “the decision to end the employment was, at the time the employment ended, the employee’s.” *Id.*, subd. 2(a) (2010). “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2010). Whether an employee has voluntarily quit or has been discharged is a question of fact. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). A ULJ’s finding of fact will be sustained if there is substantial evidence to support it. *See* Minn. Stat. § 268.105, subd. 7(d)(5) (2010).

Kirchner argues that she was discharged and did not voluntarily quit. The ULJ found that Kirchner quit her employment with Great Clips because Kirchner made the decision to end the employment even though continuing employment was available. Kirchner signed a statement that she voluntarily quit her employment with Great Clips, which suggests that it was Kirchner’s decision to end the employment. Kirchner also testified that Great Clips wanted her to work on a regular schedule and told her that she could call in for shifts even after she signed the form stating that she voluntarily quit the employment. This shows that Great Clips was willing to allow Kirchner to continue

working. Statements indicating that work is available would not lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. Substantial evidence in the record supports the ULJ's finding that Kirchner quit her employment with Great Clips.

In the alternative, Kirchner then argues that she quit the employment for a good reason caused by Great Clips. A good reason for quitting caused by the employer is a reason "that is directly related to the employment and for which the employer is responsible," is "adverse to the worker," and "would compel an average, reasonable worker to quit and become unemployed rather than remain[] in the employment." Minn. Stat. § 268.105, subd. 3(a) (2010). Whether an employee quit because of a good reason caused by the employer is a question of law. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). We review questions of law de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005)

Kirchner argues that she quit for a good reason attributable to Great Clips because Great Clips broke its promise to adjust her work schedule to accommodate the IVF process when it requested that she return to a regular work schedule. The owner of Great Clips testified that Great Clips wanted Kirchner to resume a regular work schedule at least until July, when, the owner understood, Kirchner was starting the IVF process. The owner was unaware that Kirchner began taking IVF medications on June 10 and wanted Kirchner to resume a regular work schedule only until she was unable to do so. Kirchner's manager said she would take over Kirchner's shifts if Kirchner reached a

point at which she could not be on the schedule because of the IVF process. Thus, substantial evidence in the record indicates that Great Clips was still willing to accommodate Kirchner's IVF process even after it requested that she resume a regular work schedule. There is no evidence that Kirchner was unable to resume working on a regular schedule. Absent some present and real conflict, being required to resume a regular work schedule would not compel an average, reasonable worker to quit and become unemployed rather than remain in the employment. Kirchner did not quit her employment because of a good reason attributable to Great Clips.

Finally, Kirchner argues that her IVF process satisfies the serious-illness exception to ineligibility. An applicant who quits employment may still be eligible for unemployment benefits if "the applicant's serious illness or injury made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7) (2010). Although a health issue that fails to meet the "medically necessary" test may constitute a good *personal reason* to quit, it does not entitle an applicant to benefits. *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (stating that "[a] good personal reason does not equate with good cause" to quit (quotation omitted)); *Prescott v. Moorhead State Univ.*, 457 N.W.2d 270, 273 (Minn. App. 1990) (holding that although the employee suffered from serious depression, the serious-illness exception did not apply when the employee did not meet the exception's statutory standards).

The record does not show that Kirchner quit because it was medically necessary for her to do so. Kirchner quit because of the possibility of scheduling conflicts or possible side effects from IVF medications, or both. And as already discussed, Great

Clips was willing to make adjustments to Kirchner's regular work schedule so that she could complete the IVF process. It was not, therefore, medically necessary that Kirchner quit her employment.

Because Kirchner quit her employment without a good reason caused by Great Clips and because the serious-illness exception does not apply here, the ULJ did not err by determining that Kirchner is ineligible for unemployment benefits.

Affirmed.