**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-0468**

Victoria Otis Dretsch,
Relator,

vs.

Fridley Children's & Teen's Medical Center,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 21, 2014**
**Affirmed**
**Chutich, Judge**

Department of Employment and Economic Development
File No. 30301411-3

Victoria Otis Dretsch, St. Paul, Minnesota (pro se relator)

Fridley Children's & Teen's Medical Center, Fridley, Minnesota (respondent employer)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Chutich, Judge.

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

**CHUTICH**, Judge

Relator Victoria Otis Dretsch challenges the decision of an unemployment-law judge that she is ineligible for unemployment benefits because she quit her employment without good cause, arguing that her employer violated federal and state laws, created a hostile work environment using fear and intimidation, and constructively discharged her. Because we conclude that the unemployment-law judge properly found that Otis Dretsch did not quit for good cause and that she was not constructively discharged, we affirm.

## FACTS

Otis Dretsch worked as an administrator for respondent Fridley Children's and Teen's Medical Center (the center) from September 14, 2006, until September 28, 2012. The center's board, to whom Otis Dretsch reported directly, was made up of Dr. S., Dr. H., and one other doctor. Otis Dretsch cited numerous incidents that led to her decision to quit on September 17, 2012, and most involved Dr. S., who is a physician, part owner, and president of the center.

The first incident cited by Otis Dretsch began in July 2011, when the center switched from paper to electronic charts. Otis Dretsch began noticing that Dr. S.'s patient charts were missing information. According to Otis Dretsch, once an electronic record is closed, a provider cannot re-enter the record to fill in missing information. Otis Dretsch alleged that Dr. S. failed to complete patient records to "reflect what actually took place with the patient," which was required by the center to submit a bill. If a provider provided more services, it could bill at a higher level of service. Otis Dretsch

stated that Dr. S. would bill at a higher level, but would not document sufficient services to qualify for the higher level of billing. The missing information would then make it difficult for other providers to follow up with a patient. Otis Dretsch admitted that she was never asked to cover up the missing information, but said that "it was an expectation of [her] job." The business office was responsible for auditing the charts and sending back charts to providers to fill in missing information. Otis Dretsch believed that it was her job, however, to create "checks and balances" because she did not think Dr. S. would be able to remember the missing information after seeing patients all day.

Otis Dretsch wrote an e-mail to the center's attorney on May 8, 2012, asking for advice on how to complete patient records. Otis Dretsch, Dr. H., and the center's attorney began working on a document detailing the requirement that all charts be fully completed with the intention that all providers sign it. The document was never presented to the providers.

In addition, Otis Dretsch had ongoing conversations with other members of the board about Dr. S. intimidating staff members. Otis Dretsch requested that the center invite an organizational psychologist to provide guidance on how to create a more positive work environment. The board denied her request.

The second incident cited by Otis Dretsch occurred in March 2012, and involved Otis Dretsch's request for a new process server. Dr. S. asked her on multiple occasions to get more bids for the replacement server. In her testimony, Otis Dretsch implied that this incident added to her overall feeling of disrespect, but did not articulate why it compelled her to quit.

The third incident occurred in May or June of 2012, and involved an agreement between Dr. S. and another provider on the performance of two circumcisions. The other provider did not have hospital privileges at the time, and Dr. S. and Dr. H. agreed to perform circumcisions until the provider was able to obtain privileges at that hospital. Dr. S. performed the procedures and then requested payment of $400 from the provider. The provider alleged that Dr. S. gave her an ultimatum that she either pay Dr. S. or be terminated, but the board determined that Dr. S. was simply negotiating payment for the procedures.

The fourth incident occurred at the end of August 2012, when Dr. S. requested reimbursement for a $50 gift certificate he purchased as a wedding present for a former patient. Dr. S. did not include a receipt or any documentation in support of this request. A human resources representative told Dr. S. that Otis Dretsch did not approve the request for reimbursement, and Dr. S. said "F--k Victoria" to the human resources representative. Otis Dretsch reported the comment to Dr. H., and he responded in an e-mail informing Otis Dretsch that it was not her responsibility to deny undocumented reimbursement requests. In the same e-mail, Dr. H. told Dr. S. that his behavior was inexcusable and that requests for reimbursements needed receipts. Otis Dretsch stated that Dr. S. apologized to the human resources representative but not to her.

The fifth incident occurred on the day that Otis Dretsch submitted her letter of resignation. On September 17, 2012, Otis Dretsch e-mailed the providers of the center to notify them that she had scheduled a meeting with a drug company representative. Dr. S. "replied all" stating that all but one provider had a meeting during that time and said, "I

suggest that you cancel lunch and next time give us more heads up so we can tell you if it will work or not." She received his e-mail at the end of a difficult day and believed that Dr. S. was disrespectful.

This e-mail was the "end of the rope" for Otis Dretsch, and she submitted her notice of resignation later that day. On September 18, 2012, Dr. S. met with Otis Dretsch to discuss what changes needed to be made for Otis Dretsch to withdraw her resignation. Otis Dretsch drafted a proposal that included requests such as "[t]he board agrees to conduct business using the standard business model with documentation," "[t]he board agrees to permit [Otis Dretsch] to make financial decisions based on the approved annual budget," and five requests regarding her own benefits and salary. In response, the board offered Otis Dretsch an opportunity to stay on with the center as an IT employee to help with the transition to a new administrator. Otis Dretsch declined. The board did not accept her proposal and instead accepted her resignation.

On September 28, 2012, her last day of employment, Otis Dretsch reviewed inter-office e-mails. In a few of the e-mails, Dr. S. mentioned that the board was considering replacing Otis Dretsch and that when she made a proposal as an ultimatum to avoid her resignation, he urged the board to accept her resignation.

Otis Dretsch filed for unemployment benefits. After respondent Minnesota Department of Employment and Economic Development determined that Otis Dretsch was ineligible for benefits, Otis Dretsch appealed.

At the ensuing hearing, Otis Dretsch testified that she quit because of "a difference of opinion in the direction [the center] is going," and "[a]s time progressed with [the

center], it was getting increasingly more difficult to comply with federal, state, local and the accrediting agencies, the regulations, requirements and standards."

Otis Dretsch also testified to the incidents set forth above. Generally, Otis Dretsch believed that Dr. S. disrespected her and other employees. She said that he did not greet others, was rude, did not answer questions asked of him, and did not finish his work. She believed that the office generally had a feeling of fear and intimidation created by the providers.

Dr. H. testified that the documentation that was frequently missing from Dr. S.'s patient records was family history and other notes. He stated that these categories were not required for insurance purposes or by law; rather, the clinic desired these sections to improve patient care. Dr. H. also testified about the circumcision reimbursement and that Dr. S. and the other provider were in disagreement about whether there should be reimbursement. Dr. H. stated that he believed Dr. S. was correct in requesting reimbursement for the procedures.

The unemployment-law judge determined that Otis Dretsch quit her employment without a good reason caused by the center. The unemployment-law judge found that Otis Dretsch testified that she quit because she was worried that the center was not complying with federal and state law, but that the preponderance of the evidence showed that Otis Dretsch quit because of her differences with Dr. S. and her general frustration with the center's management. The unemployment-law judge found that the record did not support a finding that the center was not in compliance with state or federal law and

that Otis Dretsch's issues with Dr. S. would not compel an average and reasonable person to quit her job.

Otis Dretsch requested reconsideration, and the unemployment-law judge affirmed her determination that Otis Dretsch was ineligible for unemployment compensation. This appeal by writ of certiorari followed.

## D E C I S I O N

We view an unemployment-law judge's factual findings "in the light most favorable to the decision [and give] deference to the credibility determinations made by the [unemployment-law judge]. As a result, this court will not disturb the [unemployment-law judge's] factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008). We review an unemployment-law judge's legal conclusion that an applicant is ineligible for unemployment benefits de novo. *See Stassen v. Lone Mountain Truck Leasing LLC*, 814 N.W.2d 25, 30 (Minn. App. 2012) (stating, in a case presenting a mixed question of fact and law, that "[w]e review de novo [an unemployment-law judge's] determination that an applicant is ineligible for unemployment benefits").

### I. Good Cause

An applicant for unemployment benefits who quits employment is ineligible for all benefits except when "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2012). "A good reason caused by the employer for quitting 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 remaining in the employment." *Id.*, subd. 3(a) (2012). "The correct standard for determining whether [the applicant's] concerns were reasonable is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted). "A good personal reason does not equate with good cause." *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted).

*Federal and state law violations*

Otis Dretsch argues that the primary reason she quit for good cause was because the center was violating federal and state law. "Illegal conduct by an employer may constitute good cause for an employee to quit." *Hawthorne v. Universal Studios, Inc.*, 432 N.W.2d 759, 762 (Minn. App. 1988). Here, as the unemployment-law judge found, the record does not show any federal or state law violations; nor, as Otis Dretsch admitted, was she ever instructed to act in violation of the law.

Otis Dretsch argues that Dr. S. violated the Health Insurance Portability and Accountability Act (HIPAA) by impermissible actions dealing with Protected Health Information.[1] The only possible violation of HIPAA raised at the evidentiary hearing was Dr. S.'s failure to timely complete patient records. Dr. H., whose testimony the

[1] Protected Health Information refers to certain patient information that is protected by HIPAA.

unemployment-law judge credited, testified that it was the center's policy, not federal or state law, that required doctors to include the information that was commonly missing in the records of Dr. S.'s patients. We defer to the unemployment-law judge's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Moreover, Otis Dretsch did not allege that the charts were left incomplete, only that they were completed at a later date.

Otis Dretsch cites two alleged HIPAA violations in her brief that were not discussed at the hearing. First, she alleges that Dr. H. used a "work around" that allowed Dr. H. to meet a "meaningful use for visit summaries" requirement when entering data into the center's records. Second, she alleges that Dr. S. left his computer unattended in public spaces, and that he accessed a patient's records without authorization. The allegations are based on evidence not considered by the unemployment-law judge, and they are not properly raised for the first time on appeal. *See Markel v. City of Circle Pines*, 479 N.W.2d 382, 384 (Minn. 1992) ("Fact issues not raised in an agency appeal will not be reviewed by this court."). Because these allegations were not before the unemployment-law judge, we cannot now assess their validity. On the record before us, substantial evidence supports the finding that Otis Dretsch was not forced to quit because of illegal activity.

*Hostile work environment*

Otis Dretsch does not contend that she quit because of hostility or harassment, but when the unemployment-law judge asked why she quit, she recited incidents involving Dr. S. and his alleged use of fear and intimidation in his interactions with the center's

employees. The unemployment-law judge found that "[t]he preponderance of the evidence shows that Otis Dretsch quit because she did not get along with [Dr. S.] and because of general frustration over how [the center] was managed."

"Good cause is a reason that is real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 511 (Minn. App. 1997) (quotation omitted). Mere dissatisfaction with a manager is not a good reason to quit caused by an employer. *Trego v. Hennepin Cnty. Family Day Care Ass'n*, 409 N.W.2d 23, 26 (Minn. App. 1987). Similarly, irreconcilable differences with the employer, *Foy v. J.E.K. Indus.*, 352 N.W.2d 123, 124–25 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984), or frustrations with one's job, *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986), do not satisfy the good cause standard.

A careful review of the record shows that substantial evidence supports the unemployment-law judge's determination that Otis Dretsch quit because of differences with Dr. S. and frustration over the management of the center. And none of the instances cited by Otis Dretsch causes us to conclude, as a matter of law, that, under these circumstances, an average employee would have been compelled to quit.

For example, Dr. S.'s "reply all" e-mail comment about cancelling a scheduled lunch, which was "the end of the rope" for Otis Dretsch, may have been more appropriately directed privately to Otis Dretsch. But because Dr. S.'s e-mail effectively cancelled an impending lunch, the e-mail was likely relevant to everyone on the "reply all" list.

To be sure, the "F--k Victoria" comment to the human resources representative was disrespectful and inappropriate. But, as the unemployment-law judge found, when Otis Dretsch reported it to Dr. H., he admonished Dr. S. And the record does not show any more inappropriate statements made to Otis Dretsch or other employees by Dr. S. Thus, this single comment did not create a hostile work environment that would cause a reasonable person to quit. The comment would compel a reasonable person to report it, which is precisely what Otis Dretsch did and management then responded. On this record, we conclude that the unemployment-law judge did not err in determining that Otis Dretsch quit because of differences with Dr. S. and that these differences do not give her good cause to quit her employment.

## II. Constructive Discharge

Otis Dretsch argues that the center was going to terminate her employment so her decision to quit was essentially a constructive discharge. "Whether an employee has been discharged or voluntarily quit is a question of fact." *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). The unemployment-law judge's factual findings are reviewed "in the light most favorable to the decision" while "giving deference to the credibility determinations made by the [unemployment-law judge]." *Skarhus*, 721 N.W.2d at 344 (citations omitted).

"A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (2012). "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." Minn. Stat. § 268.095, subd. 5(a) (2012).

Applying these principles here, Otis Dretsch learned *after* she submitted her resignation, on her last day of work, that the board considered terminating her employment. The unemployment-law judge found that the board's consideration of her termination was irrelevant because Otis Dretsch was unaware of this fact when she quit. While Otis Dretsch was not compelled to quit because she knew that the board was going to imminently terminate her, her lack of knowledge does not end the constructive discharge inquiry. If the board were considering terminating Otis Dretsch, and at the same time, purposely subjected her to objective mistreatment or intimidation intended to cause her to quit, the board's private consideration of her termination may be relevant. The board's consideration of termination in tandem with mistreatment may then amount to constructive discharge.

Here the record simply does not show a pattern of mistreatment by the board sufficient to "lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.* While Dr. S. was disrespectful at times to the center's employees, his behavior did not rise to the level of conduct sufficient to constructively discharge Otis Dretsch. Otis Dretsch testified that her issues with Dr. S. existed for the six years that she worked with him, showing that his actions were not calculated so as to cause her to quit. Under the circumstances present here, the unemployment-law judge correctly determined that Otis Drestch was not constructively discharged.

In sum, substantial evidence supported the unemployment-law judge's determination that Otis Dretsch did not quit for good cause attributable to the center and that she was not constructively discharged. Accordingly, the unemployment-law judge correctly found that Otis Dretsch was ineligible for unemployment benefits.

**Affirmed.**