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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1523

Lois Vandenheuvel,
Relator,

vs.

Friends of the Mississippi River (Corp.),
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 4, 2010
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 22464793-3

Lois Vandenheuvel, Blaine, Minnesota (pro se relator)

George R. Dunn, Tilton & Dunn, P.L.L.P., St. Paul, Minnesota (for respondent Friends of the Mississippi River (Corp.))

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

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Collins, Judge.[*]

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

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

WORKE, Judge

Relator challenges the decision by the unemployment law judge that she quit employment and is ineligible for unemployment benefits, arguing that the serious-illness exception applies. We affirm.

D E C I S I O N

Relator Lois Vandenheuvel resigned from her bookkeeper position with respondent Friends of the Mississippi River (Corp.) (FMR) after FMR denied her request for a two-month leave of absence. An unemployment law judge (ULJ) decided that relator quit her employment and that she is ineligible for unemployment benefits.

When reviewing the decision of a ULJ, we will remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). We view the ULJ's findings in the light most favorable to the decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We also defer to the ULJ's credibility determinations and evaluations of conflicting evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Relator does not challenge the quit determination. Employees who quit employment are ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2008). Relator argues that an exception to ineligibility applies

because she quit after FMR denied her request to take two months off from work, which was recommended by her medical provider.

An exception applies when the applicant quit "because of a good reason caused by the employer." *Id.*, subd. 1(1). "What constitutes good reason caused by the employer is defined exclusively by statute." *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003); *see also* Minn. Stat. § 268.095, subd. 3(g) (2008) (providing that statutory definition is exclusive and that no other definition applies). A good reason caused by the employer for quitting is a reason:

> (1) that is directly related to the employment and for which the employer is responsible;
> (2) that is adverse to the worker; and
> (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Minn. Stat. § 268.095, subd. 3(a) (2008).

The ULJ determined that relator did not quit for a good reason caused by FMR. After relator's husband passed away in November 2008, she took two weeks off from work for bereavement. Shortly after she returned to work, she began experiencing insomnia and depression and sought medical attention. In January 2009, relator and her nurse practitioner discussed relator taking time off from work and taking a trip with her family. Prior to his passing, relator's husband and relator discussed taking this trip. Her family planned to leave on February 23, 2009.

On January 13, 2009, relator requested a leave of absence from February 23 to April 11. Relator presented FMR with a letter from her nurse practitioner indicating that

relator was suffering from grief and developing symptoms of insomnia and depression. Relator's medical provider stated that it was important for relator to "get away and rest," and that she had an opportunity to take the trip with her family. Relator's request coincided with a very busy time of the year for FMR; there was a year-end close and an upcoming audit. Further, relator was the sole bookkeeper and had already taken off quite a bit of time during the year. FMR offered relator three weeks off when she submitted her request. Relator declined the offer and resigned.

FMR's refusal to grant relator's request in full is not a good reason to quit caused by the employer because it would not compel an average, reasonable worker to quit. "The employer has a right to expect an employee to work when scheduled." *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984) (holding that failure to report to work as scheduled is misconduct). Here, after allowing relator to take two weeks off for bereavement, FMR agreed to allow relator to take an additional three weeks off in recognition of her difficult circumstances, despite the fact that her absence would occur during a very busy time for the company. FMR's decision to grant relator three weeks off from work, rather than the full amount of time requested, was not a decision adverse to relator or one "that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a). The ULJ did not err in finding that relator did not quit because of a good reason caused by her employer.

Relator also argues that she quit because her medical provider recommended that she take six weeks off from work. Any claim that relator's health issues provided her

with a good reason to quit will be addressed under the serious-illness exception. 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). But this exception applies only when the applicant informs the employer of the medical problem and requests accommodation, and when no reasonable accommodation is made available. *Id.* Further, while 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 relator suffered from serious depression, serious-illness exception does not apply when employee did not meet statutory standards for application of exception).

The ULJ determined that relator declined FMR's reasonable accommodation and failed to establish that it was medically necessary to quit. When relator requested the leave, she offered to work additional hours before she left for her vacation and upon her return. Relator's nurse practitioner also stated that before the trip, relator could "work as usual to try and leave the office in the best possible shape." If it were medically necessary for relator to quit, it seems contradictory to volunteer for increased workloads. Additionally, the leave coincided with a trip that she had previously discussed with her family, even if she had not previously committed to the trip. Further, the record shows that one of the reasons that relator did not want to shorten her vacation to three weeks

was because her family was traveling by motor home and she would have to fly home if she left in the midst of the trip; relator testified that she does not fly. The record does not show that relator quit because it was medically necessary for her to do so; therefore, the ULJ did not err in deciding that relator is ineligible for unemployment benefits.

Finally, relator argues that the ULJ discredited her nurse practitioner because she is not a doctor. During the hearing, the ULJ asked relator if her medical provider was a psychiatrist or a therapist. It appears that the ULJ asked whether the nurse practitioner was a psychiatrist or a therapist merely because relator testified that the nurse practitioner was treating her for stress and depression. But the ULJ made no credibility determinations, and did not discredit the nurse practitioner's recommendation. The ULJ based the determination on the fact that relator refused FMR's reasonable accommodation and failed to show that it was medically necessary for her to quit.

Affirmed.