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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2049**

Judith Campbell,
Relator,

vs.

Mayo Foundation for Medical Education & Research,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 17, 2010
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 23078566-3

Judith A. Campbell, Alameda, California (pro se relator)

Mayo Foundation for Medical Education & Research, Rochester, 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 Peterson, Presiding Judge; Stauber, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

This certiorari appeal is from a determination by an unemployment-law judge (ULJ) that relator is not eligible for unemployment benefits because she quit her employment without a good reason to quit caused by her employer. We affirm.

FACTS

Relator Judith Campbell began working as a cytopathology technician for respondent Mayo Foundation for Medical Education and Research (Mayo) in May 2008. Relator worked in a laboratory where she studied cells under a microscope to check for abnormalities that are reported to a pathologist. After completing her initial training at Mayo, relator made errors in her work that she described as clerical errors.

Relator was issued corrective action conference forms on three occasions based on job-performance issues, including “significant clerical errors” and productivity at an unacceptable level in October 2008, “numerous and significant clerical errors” in April 2009, and low productivity and a failure to meet performance expectations in May 2009. Because of these performance issues, relator was placed back in a training regimen, which required that all of her work be reviewed by a senior cytotechnologist.

Other employees saw that relator was back in training and made comments to her, and she felt that “[i]t was like having a bright red dunce cap on [her] head.” Relator also felt that she was scrutinized more than other employees in the lab. On more than one occasion, relator’s supervisor told her that she was a good cytopathology technician, but she was not a good fit at Mayo.

Relator testified that some of her errors were caused by problems with her eyesight, which made it difficult for her to transition from looking through a microscope to looking at the computer where she recorded information about her observations. She also believed that the stress in the workplace was contributing to her mistakes. Relator also testified that there were times when the productivity levels that the employer wanted could not be met because there was not enough work available.

On July 14, 2009, relator received an e-mail from her supervisor stating that the supervisor wanted to meet with relator and someone from human resources on July 16. Relator testified: “I thought, oh, no, you know, they’re gonna fire me or do something horrible. I didn’t know what they were gonna do, but I thought I just can’t take it anymore and so I quit.” On July 15, 2009, relator gave notice to Mayo that she was quitting her job. She testified that she quit her job in order to avoid termination and because she could not stand the stress of her continued training and scrutiny and that she was unable to focus and her “work was going terribly downhill” as a result.

Relator applied for unemployment benefits, and respondent Department of Employment and Economic Development determined that she was ineligible. Relator appealed the determination, and a hearing was held by a ULJ. Relator and her attorney appeared at the hearing, but Mayo did not participate. The ULJ determined that relator was ineligible to receive unemployment benefits because she quit her employment and she did not quit for a good reason caused by Mayo. Relator requested reconsideration, and the ULJ affirmed the determination of ineligibility. The ULJ’s decision on reconsideration was based on an erroneous finding that relator did not participate in the

original evidentiary hearing and had not shown cause for missing the hearing. The ULJ later issued an amended findings of fact and decision, which acknowledges the error in the first decision and states that the ULJ fully considered the request for reconsideration and determined that the initial decision is factually and legally correct. This certiorari appeal followed.

D E C I S I O N

This court may affirm the ULJ's decision, remand for further proceedings, or reverse or modify the decision if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law," "unsupported by substantial evidence in view of the entire record as submitted," or "arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2008).

Subject to certain exceptions, an applicant who quits employment is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception applies when an applicant quit employment for a good reason caused by the employer. *Id.*, subd. 1(1).

(a) 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.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

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

The reason why an individual quit employment is a fact question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as factual findings). “We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Because it is undisputed that relator quit her employment, the issue before us is whether she quit for a good reason caused by the employer. The ULJ found:

A preponderance of the evidence shows that [relator] did not quit for a good reason caused by her employer. She quit because she was not progressing out of training and was afraid she would be terminated at the July 16, 2009 meeting for unsatisfactory performance. She described termination in her field as the kiss of death. However, no evidence was elicited that Mayo had decided to discharge her. Although [relator] testified in the hearing that her performance was affected by a vision problem for which she was being treated, she did not ask for accommodations. While [relator] felt stress due to the stigma and additional scrutiny of her

continued training, Mayo's continued training and scrutiny were legitimate responses to her performance problems. Her testimony did not establish by a preponderance that she was subjected to harassment or abusive working conditions. Her primary reason for quitting was to avoid a discharge for unsatisfactory performance on her employment record. Her treatment would not have compelled an average, reasonable worker to quit rather than remain in employment.

Substantial evidence supports the ULJ's finding that relator quit because she was not progressing out of training and was afraid that she would be terminated at the July 16, 2009, meeting for unsatisfactory performance. Relator testified that when she learned that her supervisor wanted her to attend a meeting with the supervisor and someone from human resources, she thought that she was going to be fired and she quit her job to avoid termination and because she could not stand the stress. An employee who quits a job to avoid an involuntary termination does not quit for a good reason caused by the employer. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985); *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 891-92 (Minn. App. 1984); *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-58 (Minn. App. 1983).

Relator argues that she had good reason to quit caused by the employer because she had endured a hostile work environment. But there is no evidence that relator complained to the employer about adverse working conditions and gave the employer an opportunity to correct the adverse conditions. Relator argues that she has no doubt that the human-resources department was aware that there was a problem and, therefore, had notice. However, under the statute, "the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions

before [the adverse working conditions] may be considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(c).

Finally, relator argues that the first decision on reconsideration, in which the ULJ affirmed the determination of relator’s ineligibility based on an erroneous finding that relator was not present at the evidentiary hearing, demonstrates that the ULJ was biased. However, the ULJ issued an amended findings of fact and decision that acknowledges that there was an error in the initial decision and states that the ULJ had fully considered the request for reconsideration and determined that the initial decision is factually and legally correct. Although the record does not explain how the error in the first decision on reconsideration occurred, we are not persuaded that the error demonstrates that the ULJ was biased. The error involved events that occurred after the ULJ issued the initial determination of ineligibility and did not reveal any defect in the ULJ’s findings of fact or application of law following the evidentiary hearing. We have carefully reviewed the record, including the transcript of the evidentiary hearing, and we have not found any indication that the ULJ was biased.

Affirmed.