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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1160**

Donald A. Hurst,
Relator,

vs.

Travel Tax Management International,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 14, 2009

Affirmed

Harten, Judge*

Department of Employment and Economic Development
Agency File No. 20178633-5

Anne M. Loring, P.O. Box 6873, Minneapolis, MN 55406 (for relator)

Travel Tax Management International, P.O. Box 130337, St. Paul, MN 55113
(respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, First National Bank Building 332 Minnesota Street, Suite E200, St. Paul,
MN 55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Harten,
Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Relator Donald Hurst challenges the determinations of the unemployment law judge (ULJ) that she had jurisdiction to hear this case and that relator quit his job without a good reason caused by his employer and therefore is ineligible to receive benefits. Because the ULJ had jurisdiction and because the evidence supports the conclusion that relator quit his job without good reason attributed to his employer, we affirm.

FACTS

Respondent Travel Tax Management International (TTM), owned and managed by relator's sister, Lorri Hurst (Hurst), is in the business of preparing European and Asian Value Added Tax refund claims for American companies. TTM generally has three or four employees; they work out of their homes or at clients' sites. Relator worked as an accountant for TTM from 2005 until 2007.

In August 2007, TTM's employees included relator, Maria Boscaino, Suzanne Sadowsky, and Gudrun Gergen, a new employee. The TTM staff was scheduled to take a business trip to Brussels; Hurst, Boscaino, Sadowsky, and Gudrun were leaving on 25 September, and relator was leaving on 26 September. Because Gergen's family lived in Berlin, Hurst had arranged for the TTM group to stop there en route to Brussels.

Gergen and relator became romantically involved. Hurst was aware of this involvement and did not object to it. But Hurst was dissatisfied with Gergen's performance for other reasons and planned to fire her after the trip.

Hurst spent 25 September at a client's site, away from home, but she had told relator, Gergen, and Sadowsky to spend the day at her home entering the client's receipts into the computer. Because relator decided to first organize the receipts chronologically, when Hurst returned, the task was not finished. She became angry and told relator, Gergen, and Sadowsky to leave her house.

Later that day, Hurst met Boscaino, Gergen, and Sadowsky at the airport. Sadowsky testified that Hurst "[a]sked for my corporate credit cards back. And then she said that she was done, she was done with the company, she was done with employees, that the trip was still on but we would be looking for other things to do because there was going to be no company." After handing over her credit cards, Sadowsky decided to abandon the trip and go home; Gergen also turned in her cards, but went on to Berlin, as did Boscaino.

When they arrived at the Berlin airport, Hurst decided to fire Gergen and asked Gergen to return TTM's laptop computer. Gergen refused, saying she wanted her final paycheck and her return ticket. Hurst called the police, who came to their hotel; the police told Hurst to provide Gergen with travel documents for the return trip, and told Gergen to turn over the laptop. Relator was present during the dispute, but did not speak up for Hurst against Gergen.

Relator then accompanied Gergen to visit Gergen's family. When he joined Hurst in Belgium, they argued over Hurst's treatment of Gergen and relator's failure to side with her against Gergen. After they returned home, relator sent Hurst a written resignation.

Relator applied for unemployment benefits and established an account. On 23 October 2007, the Department of Employment and Economic Development (DEED) sent out a determination of benefits, giving the amount of relator's weekly benefit and the maximum amount he could receive if he was determined to be eligible and stating that the determination would be final unless it was appealed by relator or TTM on or before 13 November. Neither Hurst nor relator disputed the accuracy of the determination of benefits, and neither appealed. Thus, on 13 November, the benefit determination became final.

On 30 November, DEED sent relator and TTM a determination of relator's eligibility, stating that relator was eligible because he had a good reason caused by TTM for quitting his job. The document also said that the eligibility determination would be final unless it was appealed by 20 December and that "[t]he recommended method for filing an appeal is by Internet. You can do so by logging in to your account at www.uimn.org and following the prompts." Hurst testified that, on 19 December, she went to the TTM account, followed the prompts, pulled up relator's account, and hit "appeal."

On 20 December, DEED sent TTM and relator a "Notice of Appeal" stating that TTM "appealed the Monetary determination" and that the hearing would be on 8 January 2008. Both relator and TTM, through Hurst, appeared pro se at that hearing. The ULJ, after finding that no one in fact appealed the benefits determination, received testimony on the eligibility issue, i.e., whether relator had a good reason caused by TTM to quit. She continued the hearing until 4 February because relator wanted to subpoena a witness.

Following the 4 February hearing, the ULJ issued her decision finding that relator is ineligible for benefits because he quit his employment without a good reason attributable to TTM; the ULJ also found that relator had already received an overpayment of \$10,222. Relator moved for reconsideration, and the ULJ affirmed that decision. Relator then petitioned for review by this court and retained an attorney.

Relator's attorney moved to correct the record, specifically seeking copies of the Notice of Appeal of the Determination of Benefit Account sent to relator and TTM on 20 December, the Determination of Benefit Account, and relator's electronic request for reconsideration. The ULJ responded to this motion by sending electronically generated copies of the first two items and explaining that she reviewed only a copy of a letter by relator requesting reconsideration, not an electronic request.

Relator now argues that the ULJ lacked jurisdiction to reverse the determination that relator was eligible for benefits and that there is adequate evidentiary support for the findings on which the ULJ based the conclusion that relator quit without a good reason caused by TTM.

D E C I S I O N

1. Jurisdiction

Jurisdiction is a question of law subject to de novo review. *Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

Relator did not challenge the ULJ's jurisdiction at the hearing, but he argues on appeal that the ULJ lacked jurisdiction because the written determination of his eligibility

said that it would be final unless appealed by 20 December and that TTM's appeal on 19 December was apparently not from the determination of eligibility but of benefits.

The ULJ became aware of this problem when she noted that “[DEED] set this up as an appeal to the Determination of Benefit Account” and asked Hurst if TTM meant to appeal the determination of benefits. Hurst answered, “No, I meant to appeal . . . the fact that he should be getting . . . benefits because he quit, he resigned” The ULJ then asked Hurst to “go through what you did [to appeal] and if you followed Department instructions and why it doesn't show that you actually appealed [the eligibility determination] *because I have to determine if I have any jurisdiction to hear it.*” (emphasis added.) Hurst replied:

I click on the social security number for the person that I want to file the appeal for. And then you get this other screen and its Determination of Eligibility Detail, and then you just, there's a thing called file an appeal and you click on that, and then that's it, you've filed an appeal. . . . So there's no, there's nowhere to say which thing you're applying for, I mean which one you're questioning. You just click on it and then that's it. . . .

On 19 December, when Hurst filed her electronic appeal, the determination of benefits was no longer appealable: it had become final on 13 November. The only appealable issue was eligibility, and Hurst believed she was appealing that issue. The ULJ found that DEED erred in processing Hurst's appeal as an appeal of benefits, which would have been untimely, instead of an appeal of eligibility, which was timely:

Lorri Hurst's testimony was credible that she attempted to file a timely appeal to the determination of eligibility. She followed Department instructions and timely appealed the eligibility determination. The Department incorrectly took it as an appeal to a determination of benefit account. Lorri Hurst said the Department site gave her no choice on issues, just the choice to click on appeal.

Because only one issue was then appealable, the site would have had no reason to give choices as to the appealable issue.

To argue that the appeal of eligibility was untimely and the ULJ lacked jurisdiction, relator relies on *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. App. 1986) (holding no jurisdiction when petition for certiorari was not mailed within 30 days of party adverse being notified of decision, although it was mailed within 30 days of party's counsel being notified, under Minn. Stat. § 268.10, subd. 8 (1984)), *review denied* (Minn. Aug. 13, 1986) and *Baldinger Baking Co. v. Stepan*, 354 N.W.2d 569, 571 (Minn. App. 1984) (holding no jurisdiction where appeal not made until after time to appeal had expired, under Minn. Stat. § 268.10, subd. 2(3) (1984)), *review denied* (Minn. Dec. 20, 1984). Both cases are readily distinguishable. They involve an appeal that was untimely mailed in violation of a statute. Here, Hurst provided undisputed evidence that she did timely file an appeal using the recommended electronic procedure, and no statutory violation is alleged.

Relator suggests various procedures Hurst could have used to ascertain whether she had appealed the eligibility determination rather than the benefit account determination, but none of these procedures is required by statute or recommended in DEED's directives. Moreover, Hurst would have had no reason to use such a procedure—she assumed she was appealing the eligibility determination because it was the only issue appealable when she filed and she was given no option as to the issue she appealed.

The ULJ did not err in ascribing the error to DEED, concluding that the appeal was timely filed, and exercising jurisdiction.

2. Quit Without Good Reason Attributable to Employer

It is undisputed that relator quit his employment. An employee who quits employment is not ineligible for unemployment benefits if he quit because of a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007). A good reason caused by the employer is a reason that is directly related to the employment and for which the employer is responsible, that is adverse to the employee, and that would compel an average, reasonable employee to quit and become unemployed rather than remain in the employment. Minn. Stat. § 268.095, subd. 3(a) (Supp. 2007). “The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). While the burden of proof as to whether the employee quit is on the employer, when the quit has been established the burden shifts to the employee to show good reason attributable to the employer. *Edward v. Sentinel Mgmt.*, 611 N.W.2d 366, 368 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000).

Relator claimed that he quit because Hurst’s intolerable behavior to her employees created a hostile environment in which relator could not work. The ULJ found that “[t]he testimony of [relator’s] witnesses and Lorri Hurst’s witness do[es] not show any hostile work environment or ongoing intolerable behavior.” This finding had the requisite evidentiary support.

Relator's first witness was Sadowsky; she was questioned by the ULJ, by Hurst, and by relator. The ULJ asked Sadowsky what she thought of the office environment as far as Lorri Hurst was concerned. Sadowsky answered, "I got along with [Lorri Hurst], I mean it was, it was fine. . . . My own work environment with Lorri up to that day was fine. . . . I personally had no incidents with Lorri" Hurst asked Sadowsky, "[D]id you feel like you enjoyed your work when you were working with me?" and Sadowsky answered, "Yes."

Relator asked Sadowsky why she no longer worked at TMM; she answered, "Because I found other employment." He asked her why she thought she was terminated; she replied, "Because [Lorri Hurst] said the company was over, she was going to Europe, she was going to sell the company, she was going to be done, she was done with employees. That's how she worded it." Relator also asked Sadowsky if she remembered that the two of them had told Gergen that Hurst sometimes "goes off the handle." Sadowsky at first declined to answer, then agreed that this had occurred. Sadowsky's testimony did not show that Hurst's treatment of employees provided relator with a good reason to quit because nothing to which she testified would have compelled an average, reasonable employee to become unemployed.

Relator's second witness was Pete Hertzke, who had worked intermittently as a part-time, on-call auditor for TTM. Hertzke was questioned by relator and by Hurst. He testified that, when he asked relator why Hurst had stopped calling him for jobs, relator said that Hurst did not like Hertzke's response to her orientation, did not like the fact that Hertzke had worked for another company, and mistakenly believed that Hertzke poorly

performed a job for TTM. Hurst then asked Hertzke how many times he had spoken with her personally; he said three or four. She asked where Hertzke got his information about her; Hertzke said that all his information about Hurst and about why he was not being called for jobs had come from relator, not from Hurst. Hertzke's testimony also failed to reflect a work environment or behavior by Hurst that would have caused an average, reasonable employee to quit a job. Thus, neither of relator's witnesses met his burden of showing that he had a good reason to quit his employment.

Moreover, the testimony of TTM's witness, Boscaino, also indicated that Hurst's behavior to employees did not give relator a reason to quit. Boscaino had been at the airport and in Berlin, where relator contends that the objectionable behavior occurred. Boscaino testified that Hurst had not seemed hysterical at the airport. About the Berlin incident, she testified that Gergen had "tried to sneak out before the police came and tried to get into a cab and she had put the [TTM] computer in her sister's suitcase while pretending it was in her own suitcase. . . . [W]hen the police came, [Gergen] was very argumentative that . . . she was in the right to take this computer equipment." Relator asked Boscaino if it was true that Gergen did not receive a plane ticket from Berlin to Brussels so she could catch the flight home; Boscaino said Gergen received a train ticket to Brussels. Again, the testimony does not indicate that Hurst's conduct provided a reason for an average, reasonable employee to leave a job and become unemployed.

"The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols*, 720 N.W.2d at 594. The burden of proof for

relator's reason to quit was on relator. *See Edward*, 611 N.W.2d at 368. Relator did not meet that burden: the testimony showed that Hurst's behavior to her employees was not so intolerable as to provide relator with a good reason to quit.

Affirmed.

Dated:

James C. Harten, Judge