STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1467

Blenda K. Hagberg,
Relator,

vs.

Lakes Broadcasting Group, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

Filed May 14, 2012
Affirmed
Crippen, Judge[*]

Department of Employment and Economic Development
File No. 27652256-3

Blenda K. Hagberg, Crosby, Minnesota (pro se relator)

Lakes Broadcasting Group, Inc., Breezy Point, Minnesota (respondent)

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

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Crippen, Judge.

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[*] Retired judge of the Minnesota Court of Appeals, serving 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

CRIPPEN, Judge

Relator Blenda Hagberg challenges the unemployment-law judge's (ULJ) determination that she is ineligible to receive unemployment benefits. She disputes factual findings that support the ULJ's determination that she did not have good reason to quit that is attributable to her employer. Because these findings are substantially supported by the record, and there is no merit in additional assertions of error, we affirm.

FACTS

Relator commenced work as a program director for respondent Lakes Broadcasting Group, Inc., in November 2004. Her responsibilities included music acquisition and rotation, announcer scheduling, arranging on-air promotions, some supervision of on-air announcers, and co-hosting a home-shopping program with a coworker. From the start of her employment until September 2009, relator complained to her supervisor on three separate occasions regarding inappropriate sexual comments directed at her during the radio program by her coworker. After the third such incident, in September 2009, relator's supervisor reprimanded relator's coworker and removed relator from the radio program.

Between September 2009 and April 2011, relator complained to her supervisor about additional incidents between her and the coworker. Relator quit her employment on April 23, 2011, because of her coworker's behavior and because she believed that her employer had removed her from the radio program as retaliation for her sexual-harassment complaints.

Respondent Minnesota Department of Employment and Economic Development notified relator in May 2011 that she was ineligible to receive unemployment benefits because she quit her employment without a good reason caused by her employer. Relator appealed that decision and a ULJ conducted an evidentiary hearing in June 2011. The ULJ determined that relator was ineligible for unemployment benefits, finding that the employer did not remove relator from the radio program as a form of retaliation; the later-reported incidents do not show harassment or a reasonable cause for quitting; the evidence does not demonstrate that relator quit her employment because of a medical necessity; and relator did not request accommodation for her medical condition before quitting. The ULJ also denied relator's request to subpoena certain witnesses and her coworker's personnel records. On reconsideration, the ULJ affirmed the earlier decision.

D E C I S I O N

This court will correct a ULJ's decision if, among other reasons, it represents an error of law or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). "This court views the ULJ's factual findings in the light most favorable to the decision." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). We will not disturb a ULJ's findings when they are substantially sustained by the evidence. *Id.*

An applicant who quits employment is ineligible for unemployment benefits, subject to stated exceptions. Minn. Stat. § 268.095, subd. 1 (2010). Here, although it is undisputed that relator quit her employment, relator asserts that her quit falls within two

of the statutory exceptions: good reason caused by the employer and medical necessity. *See id.*, subd. 1(1), (7).

1.

Relator challenges the ULJ's determination that she had no good reason to quit that was caused by her employer. A good reason caused by the employer "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." *Id.*, subd. 3(a) (2010). Although we review matters of law de novo, the decision in this case turns on the ULJ's findings of fact, which we review for clear error.

Relator first argues that her employer removed her from the radio program in retaliation for her filing a sexual harassment complaint against her coworker. The ULJ found that relator's employer did not remove her from the radio program as a form of retaliation; indeed, the ULJ found that relator's retaliation theory relied on speculation and lacked credibility, and the ULJ instead credited the testimony of relator's supervisor "because it present[ed] the more likely version of events." The record substantially sustains these findings.

Relator's supervisor testified that his decision was not retaliatory and explained that he "wanted to be sensitive to [relator] and her feelings" and "thought the best thing to do would be [to] remove her from what [relator] determined to be a hostile environment." Relator's supervisor also testified that he thought it would "not [be] the correct approach" to reduce the weekend hours of relator's coworker, which could be perceived as

rewarding poor behavior. Moreover, the record reflects that the radio program comprised a small part of relator's job—an hour and one-half each week—and relator continued working for respondent for approximately one and one-half years after being removed from the radio program. As the ULJ concluded, these facts suggest that relator's removal from the radio program was not so significant that it would cause "an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a)(3).

Relator also argues that her supervisor and employer tolerated a pattern of continued harassment and a "hostile work environment" created by her coworker, and describes a number of specific incidents. An individual "has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action." Minn. Stat. § 268.095, subd. 3(f) (2010). But a personality conflict with a coworker or mere dissatisfaction with a supervisor or working conditions is not good reason to quit caused by the employer. *See Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (holding that good cause to quit does not include "irreconcilable differences with others at work" or an employee's frustration or dissatisfaction with working conditions). Finding again that that the supervisor's explanation of these incidents was more credible than relator's, the ULJ determined that working conditions were not so egregious as to cause the average reasonable worker to quit employment and become unemployed. The record supports the ULJ's findings.

Relator complained to her supervisor in September 2009 that, on the air, her coworker made a suggestive remark and gesture to her. On two prior occasions, relator had complained to her supervisor regarding sexual comments that her coworker had made during the radio program. After the September 2009 incident, relator's employer issued a written warning to relator's coworker, indicating that further incidents of such behavior would result in his termination, required him to attend sensitivity and conflict management training and apologize to relator, held at least two meetings with both relator and her coworker in an attempt to resolve their conflict, and ultimately removed relator from the radio program.

In addition, relator's supervisor investigated each incident that relator reported after the September 2009 incident and concluded that her coworker's actions were not intentional or designed to intimidate or harass relator. On a record substantially supporting the finding, the ULJ found that relator's contrary characterizations were speculative and were not credible. The supervisor explained that it is common for coworkers to get in each other's way in the manner that relator complained of because there are narrow spaces at the radio station. Moreover, the record reflects that relator and her coworker compounded the hostility surrounding their interactions by refusing to speak to each other. The ULJ's findings are sustained by the record.

In sum, the record demonstrates a non-retaliatory basis for removing relator from the radio program and a personality conflict between relator and a coworker. This evidence substantially sustains the ULJ's finding that relator's working conditions would not have led a reasonable person to quit and become unemployed. *See* Minn. Stat.

§ 268.095, subds. 1(1), 3(a); *see also Peterson*, 753 N.W.2d at 774 (stating that we view ULJ's factual finding in light most favorable to ULJ's decision).

2.

Relator also challenges the ULJ's finding that it was not medically necessary for her to quit employment and that, even if it were medically necessary for her to quit, she did not request reasonable accommodation.

Medical necessity is a valid exception to ineligibility for unemployment benefits for an applicant who quit employment only "if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." Minn. Stat. § 268.095, subd. 1(7). The record demonstrates that relator took anti-anxiety and sleeping medications and that she informed her supervisor of this. But relator expressed uncertainty about whether she was diagnosed with an actual medical condition, and the record does not establish that she informed her employer of any medical conditions. Moreover, relator testified that she was able to perform her job duties and that she did not request accommodation for any medical condition. Accordingly, relator has not satisfied the requirement for eligibility arising out of a medical necessity to quit.

3.

Relator also argues that the ULJ improperly denied her request to subpoena certain witnesses and documents that she believes would prove that her employer tolerated her coworker's harassing behavior. A ULJ "has authority to . . . issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property

considered necessary as evidence in connection with the subject matter of an evidentiary hearing." Minn. Stat. § 268.105, subd. 4 (2010). A ULJ may deny a subpoena request "if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." Minn. R. 3310.2914, subp. 1 (2011).

Near the end of the evidentiary hearing, the ULJ denied relator's subpoena requests, concluding that relator's subpoena requests involved evidence that would be cumulative of other testimony because the facts surrounding her coworker's actions were not disputed, and that this evidence would be irrelevant to the extent that it involved conduct that affected others but did not affect relator. The record supports these conclusions. Accordingly, substantial evidence supports the ULJ's conclusions and the ULJ's ruling on the subpoena requests is correct as a matter of law.

4.

Finally, relator argues that the male ULJ's decision reflects bias against her circumstances as a female employee. But because relator fails to make any showing of evidence in the record to support her assertion of bias, and our careful review of the record has found none, we do not consider this argument on appeal. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (observing that assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection). Accordingly, relator is not entitled to relief on this ground.

Affirmed.