

No. A05-2165

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State of Minnesota  
**In Court of Appeals**

SHIRLEY NICHOLS,

*Relator,*

vs.

RELIANT ENGINEERING & MANUFACTURING INC,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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**RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX**

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## **I. LEGAL ISSUE**

Under the law, a person who quits employment for other than a defined set of reasons is disqualified from receiving benefits. Shirley Nichols was treated rudely by a co-worker who then apologized. Later, she had another run-in with the same co-worker, and before the employer could investigate the incident, she quit. Is Nichols disqualified from receiving benefits?

## **II. STATEMENT OF THE CASE**

This case involves whether Relator Shirley Nichols is entitled to unemployment benefits. Nichols established a benefit account with the Minnesota Department of Employment and Economic Development. A department adjudicator initially determined that Nichols quit her employment for a good reason caused by Reliant Engineering, and that she therefore was not disqualified from receiving benefits. (D-1)<sup>1</sup> Reliant appealed. A de novo hearing was held, and the unemployment law judge reversed the initial determination, concluding that Nichols quit her employment for other than a good reason caused by the employer and that she was disqualified. (Appendix to Department's Brief, A3-A6)

Nichols filed a request for reconsideration to the unemployment law judge, who issued an order affirming the initial decision. (Appendix, A1-A2)

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<sup>1</sup> Transcript references will be indicated as "T." Exhibits in the record will be "D" for the department, with the exhibit number following.

This matter is before the Minnesota Court of Appeals on a writ of certiorari obtained by Nichols under Minn. Stat. §268.105, subd. 7(a) (2004 and Supp. 2005) and Minn. R. Civ. App. P. 115.

### **III. STATEMENT OF FACTS**

Nichols worked for Reliant Engineering as an office manager and receptionist. (T.6) The vice-president and general manager was Philip Askren. (T.2) The office manager was Pam Perales. (D4)

There was an individual named Scott Stach who worked as a brake press operator for Reliant. (T.7) On one occasion, while passing through Stach's work area to get water, Nichols saw that Stach looked upset and was swearing, and she teased him about the fact that he didn't look happy. (T.7) Stach became angry, and referred to Nichols as a "fuckin' bitch." (T.7) She asked why he would say that to her, and he told her it was because all women were "fuckin' bitches." (T.7) Nichols left Stach's work area and went back to work.

The next workday, Stach approached Nichols first thing in the morning and told her that he knew he owed her an apology and wanted to apologize. (T.8) Nichols responded that he could apologize if he wanted, but she would not accept it. (T.8) She said that if he wanted to apologize, he would have to do it publicly in front of everyone who was present during the incident on the previous day. (T.8) Stach left, upset with Nichols's response. (T.8)

After this incident, Nichols became convinced that Stach intentionally let go of doors so that they would close in her face. (T.8) She complained about this to the employer.

On a later date, Nichols was talking to another employee in a “safe zone” in the production area when Stach improperly backed up a forklift such that she felt it could have struck her. (T.8) She concluded that this was done intentionally to attempt to injure her, and she again complained to the employer. She also went to Stach and told him, “Don’t you ever try to run me down again. If not, you will be in to see [the owner].” (D7) The employer disciplined Stach for operating the forklift unsafely. (T.25) The employer also asked Nichols to be careful and listen for the forklift backing up. (D7)

On Nichols’s birthday, she received a phone call in the break room, so she went in that room to take the call. (T.10) The break room had a door that, while it had windows in it, was arranged such that there had been previous problems with the door being accidentally opened by someone unaware that there was a person on the other side of the door. (T.22) The employees at Reliant also had a habit of kicking open that particular door, and even Askren, the vice-president and general manager, had had the door kicked or knocked open in his face in the past by people who did not realize that he was there. (T.22) On this occasion, Stach kicked open the door, which startled Nichols so much that she screamed. (T.10) Stach immediately apologized to her and said he didn’t mean to scare her. (D5)

Nichols continued her phone call, but believed she could hear Stach telling other employees that the way she screamed and was frightened had been funny. (T.10) Nichols went out to Stach's work area and confronted him, saying, "I suppose you think that's funny." (T.11) Stach again became angry, and again called her a "fuckin' bitch." He also gestured toward her with a part he was holding. (T.11)

Nichols reported the incident to Perales, who pointed out that it was common for the men to kick the door. (T.10) Nichols responded by insisting that this was done on purpose. In response to Nichols's complaints, Reliant immediately began an investigation. Before that investigation could be undertaken in any detail, Nichols gathered her belongings, left work, and never returned. Nichols later said that she was afraid that Stach would come to work and shoot her, because "you hear of these things happening." (T.12)

#### **IV. ARGUMENT**

##### **A. SUMMARY OF ARGUMENT**

Nichols quit her employment after one incident of being sworn at by Stach, one safety violation she chose to interpret as intentional, and one confrontation she initiated in which his response was inappropriate. The most serious of these incidents, and the only one that could even arguably rise to the level of good cause for quitting if her employer offered no response is the last incident, which she did not give her employer a chance to even investigate before she quit. While there certainly comes a point where an employer's failure to respond appropriately to

harassment by a co-worker may become good reason for quitting, Reliant did not fail to respond to these incidents. Instead, it disciplined Stach and investigated appropriately until the point where Nichols quit her job. Nichols is disqualified from receiving benefits.

## **B. STANDARD OF REVIEW**

Effective for unemployment law judge decisions issued on and after June 25, 2005 that are directly reviewed by the Court of Appeals, the legislature restated the standard of review at Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005) as follows:

(d) The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

## **C. ARGUMENT FOR DISQUALIFICATION**

An applicant who quits employment is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subs. 1 and 3 (2004)<sup>2</sup> provide in pertinent part:

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<sup>2</sup>Under Laws 2004, ch. 183, sec. 62, the 2004 amendments to Minn. Stat. § 268.095, subd. 1 applies.

Subd. 1. **Quit.** An applicant who quit employment shall be disqualified from all unemployment benefits except when:

\* \* \*

(1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3;

\* \* \*

Subd. 3. **Good reason caused by the employer defined.**

(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.

The reason for quitting must be caused by the employer in order to fit the exception to disqualification, so the proper inquiry relates to the employer's behavior; in other words, whether the employer failed to take timely and appropriate action to respond to the co-worker's behavior.

In this case, Nichols refers to a long history of being harassed and abused by Stach. There is nothing in the record, however, to support anything other than a couple of isolated incidents, the most serious of which she did not allow the employer to investigate or respond to before quitting. It is important to separate the incidents where the employer had been given a chance to respond from the one where it had not.

**1. Where the employer had the chance to respond, it did so appropriately.**

It is certainly unfortunate that Stach made the rude remarks he did in the first incident in early 2004 that appears to have started the animosity between the

two. His behavior was rude, and while Nichols apparently provoked him at a time when she recognized he was already upset, there is no excuse for the language he directed toward her. However, it is also regrettable that when he approached her the next day to apologize, she chose to refuse the apology and sacrifice an obvious opportunity to end the rift. Forcing Stach to apologize in front of others has the appearance of attempting to humiliate him, rather than securing his agreement that he will not make remarks of that kind to her in the future, as she had every right to do. Nichols appears to have played a role in setting up a feud of sorts between herself and Stach that was unnecessary from the beginning.

Nichols's own role in the escalation of the situation is evident from the importance she places on, essentially, Stach's failure to hold doors open for her. Her allegation is that he would "let go" of doors as she was coming through – in other words, he would fail to hold them open as she anticipated. While it is discourteous to fail to hold open a door, it falls far short of abuse or harassment, and Nichols could simply have waited for Stach to pass through and then opened the door for herself. Reliant cannot be expected to have disciplined Stach on every occasion that Nichols claimed he failed to hold a door for her. While she may consider his behavior impolite, the fact that it was not met with discharge is not the sort of maltreatment that motivates average, reasonable people to quit their jobs.

Similarly, there is no evidence whatsoever that the incident with the forklift was intended to harm Nichols. It has the appearance of carelessness in every

respect, and Reliant responded accordingly, by writing up Stach for his unsafe operation of the forklift. To hold it unreasonable of Reliant not to have summarily fired Stach on the assumption that he was trying to cause an injury would be excessive. Reliant responded properly, by disciplining its employee. Nichols has cited no other incidents in which she believes that actual efforts to harm her were made, and it does not appear that this is anything but the kind of safety violation that goes on in many workplaces. The establishment of “safe zones” itself reflects an understanding that there can be potential problems with collisions between forklifts and people standing in work areas. The fact that Stach failed to respect the safe zone does not prove that he was consciously trying to run anyone over. The employer responded appropriately, and the behavior was not repeated.

**2. In the final incident, the employer’s response had been adequate up to the point where Nichols quit.**

As to the final incident, it amounted to a man who kicked a door, frightened a woman into screaming, and apologized for startling her. It needed to be nothing more than that. Even if Nichols felt the need to elevate this into some sort of complaint, she could simply have gone to her employer to report it. Her decision to pursue Stach into his work area and publicly and rudely confront him – “I suppose you think that’s funny” – is what led to the further escalation. Again, Stach should not have sworn at her. He should not have moved the part toward her.

But in any event, this incident had not even been investigated and the employer had not even had any opportunity to respond when Nichols took her things and quit. Clearly, Nichols resented Stach's behavior and believed she should be protected from offense, and clearly, she concluded in her own mind that Stach had some sort of malicious intent toward her. But aside from being sworn at twice – and apologized to twice – Nichols had no basis to reasonably believe there was any danger to her.

Perales had already told Nichols that Reliant would be investigating and would begin by speaking to Stach. That response was appropriate, and it provided Nichols with adequate assurance that the problem was being addressed.

Nichols complains that she was not told when Stach was being written up or disciplined. She appears to have concluded that if she was not told the outcome, nothing was being done. That is not, however, the way workplaces operate, as employees are typically not told about other employees' discipline for reasons of confidentiality. Therefore, it is not a reasonable assumption for an employee to make that if she hasn't been told someone was written up, he wasn't written up.

Instead, the employee's reasonable determination of whether the employer has addressed the situation is based on whether the behavior she is complaining about is repeated. Here, until the final day, the two significant incidents she had complained about – the rude remarks in early 2004 and the forklift incident – had not been repeated. There was no reason to believe the employer was overlooking her concerns. She had no reason to believe the employer was refusing to address

the final incident, either. Perales told her that it was being investigated, and that Stach would be spoken to about it.

Nichols appears to have concluded that she could quit her job, go home, and then wait for someone to call her with news that they had fired Stach and ask her to return. She bases some of her frustration and complaint on the fact that this did not occur. But Nichols had already ended her employment by then. The employer had not even had time to speak to Stach and fire him when Nichols left the premises. She cannot give, as reasons for quitting, the employer's failure to chase her after she had already done so.

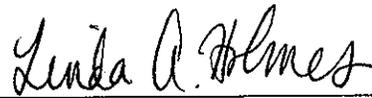
While Nichols tries to claim multiple instances of "physical harm," she has an unusual definition of physical harm, given that she believes it is physical harm to be "scared to death" when someone kicks a door. (Rel. Br. 1) Someone kicking a door open in your presence is not "physically harassing," particularly when the person immediately apologizes, as she admits that Stach did.

In explaining her own decision to pursue Stach and confront him rather than allow Reliant to investigate the incident involving the kicked door, Nichols claims that she had "waited and waited for Reliant to do something about it." (Rel. Br. 2) The testimony at the hearing was that she was gone within a half-hour of the original incident, meaning she confronted Stach sometime earlier than that. Whatever "waited and waited" means to Nichols, it is apparently quite different from what it means to most employees.

**V. CONCLUSION**

The unemployment law judge correctly concluded that Nichols quit her employment and that no statutory exception to disqualification applied. She therefore was disqualified from receiving benefits. The department asks that the Court affirm the agency decision.

Dated this 17<sup>th</sup> day of January, 2006.



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).