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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1455**

Michael A. O’Claire,
Relator,

vs.

Accra Care, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 8, 2008
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 4685 06

Michael A. O’Claire, 45198 County Road 35, Deer River, MN 56635-2483 (pro se relator)

Accra Care, Inc., 1011 First Street South, Suite 315, Hopkins, MN 55343-9478 (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Huspeni, Judge.*

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

UNPUBLISHED OPINION

LANSING, Judge

By writ of certiorari, Michael O'Claire appeals an unemployment law judge's determination that O'Claire is disqualified from receiving unemployment benefits. Because O'Claire quit his job without good reason caused by his employer and because the procedures used by the unemployment law judge do not amount to violations of the department's rules or O'Claire's right to a fair hearing, we affirm.

FACTS

Accra Care, Inc. employed Michael O'Claire as a personal care assistant beginning in July 2005. As a personal care assistant, O'Claire worked on an individual basis with a student who is homebound. The student's parents, Ricky and Janice Goudy, hired O'Claire and set his schedule. Accra Care paid O'Claire on an hourly basis for the time he spent with the student before and after school, about 4.5 hours each weekday. During school hours, O'Claire was separately employed by the student's school district. In addition to paying O'Claire an hourly wage, the school district reimbursed him for the expenses he incurred transporting the student between his home and school. This arrangement continued until O'Claire quit his job in January 2006.

After O'Claire quit his job, the Minnesota Department of Employment and Economic Development determined that O'Claire was disqualified from receiving unemployment benefits because he did not quit his employment for a good reason caused by Accra Care. O'Claire appealed and a hearing was scheduled.

At the evidentiary hearing, O'Claire described how he became increasingly dissatisfied with the way in which he was treated by Ricky Goudy and the potential negative effect of Goudy's behavior on O'Claire's progress with the student. During the hearing, O'Claire recounted four separate arguments with Goudy that affected his decision to quit.

The first argument occurred in September or October of 2005. O'Claire did not remember the cause of the argument but testified that Goudy got angry, yelled at him, and accused him of lying and going behind his back. The second argument related to O'Claire's reimbursement for transportation expenses. O'Claire testified that, in front of the student, Goudy again accused O'Claire of lying and going behind his back. The third argument occurred when O'Claire received a letter indicating that he could not submit another timesheet to Accra Care until the student's medical assistance was reinstated. O'Claire believed that the Goudys should have notified him of the medical-assistance problem earlier because it affected his job. The fourth argument again related to transportation expenses after the Goudys were asked to verify the mileage report that O'Claire had submitted to the school district for reimbursement. O'Claire testified that, in front of the student, Goudy became verbally abusive and accused him of being greedy.

Goudy testified that he and O'Claire did have several arguments relating to the care of his son and to O'Claire's claims for mileage reimbursement. Goudy stated that he may have raised his voice, but he did not yell at O'Claire. He admitted to accusing O'Claire of lying once about his mileage claims because they varied from day to day for

mileage between the same points and Goudy did not accept O’Claire’s explanation that it was attributable to weather conditions or the use of smaller tires.

After the fourth incident, on January 5, 2006, O’Claire gave Goudy notice that he was quitting. O’Claire said he would continue working only through the end of the month. Nothing in the record indicates that O’Claire complained to Accra Care about Goudy’s behavior or expressed concern about the student’s progress before he informed Accra Care of his decision to quit in early January. O’Claire does not dispute that Accra Care first received notice of his workplace issues when he faxed the company a copy of his resignation letter.

Following the evidentiary hearing, an unemployment law judge determined that O’Claire was disqualified from receiving unemployment benefits. O’Claire then filed a request for reconsideration, and an unemployment law judge affirmed the disqualification. O’Claire now petitions for review of the order of affirmation.

D E C I S I O N

I

We review an unemployment law judge’s (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ’s decision).

The determination that an employee quit without good reason caused by the employer is a legal conclusion that we review de novo. *See Zepp v. Arthur Treacher Fish*

& Chips, Inc., 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law); *see also Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (exercising independent judgment on issue of law). But we defer to the ULJ's assessment of credibility and resolution of conflicting testimony. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); *see also* Minn. Stat. § 268.105, subd. 7(d) (stating court of appeals may reverse decision of ULJ if findings unsupported by substantial evidence).

An employee who quits his employment is disqualified from unemployment benefits unless he quit for a good reason caused by his employer. Minn. Stat. § 268.095, subd. 1(1) (2006). A good reason is one that is adverse to the worker, directly related to the employment and for which the employer is responsible, and would compel an average, reasonable worker to quit and become unemployed. Minn. Stat. § 268.095, subd. 3(a) (2006). Before adverse work conditions may be considered a good reason for quitting caused by the employer, the worker must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions. *Id.*, subd. 3(c) (2006).

The ULJ found that O'Claire was disqualified from receiving benefits because he was not subject to treatment that was so unreasonable that it would compel the average, reasonable worker to quit and because O'Claire did not advise Accra Care of any objectionable conduct before he submitted his notice of quitting. The record contains substantial evidence supporting the ULJ's determination that these two independently sufficient grounds disqualify O'Claire from receiving benefits.

First, the record supports the determination that Goudy's treatment of O'Claire would not compel the average, reasonable worker to quit and become unemployed. We have previously held that "[t]he phrase 'good cause attributable to the employer' does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986); *see also Bongiovanni v. Vanlor Investments*, 370 N.W.2d 697, 699 (Minn. App. 1985) (noting that personality conflict is not good reason for quitting). Although O'Claire was frustrated with Goudy's timing and approach to workplace disagreements, the ULJ did not err by determining that Goudy's manner of treatment was not so unreasonable that it would compel the average, reasonable worker to quit and, therefore, O'Claire's frustration and dissatisfaction did not constitute a good reason to quit under Minn. Stat. § 268.095, subd. 3(a).

Second, because O'Claire did not complain to Accra Care and give it a reasonable opportunity to correct any adverse working condition before he quit, O'Claire's reason for quitting was not caused by Accra Care. *See* Minn. Stat. § 268.095, subd. 3(c) (stating that, before adverse work conditions may be considered good reason for quitting caused by employer, worker "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions").

O'Claire argues that by communicating his dissatisfaction to Goudy he effectively complained to his employer. He bases his argument on the fact that the Goudys had the authority to set O'Claire's schedule and terminate his employment and therefore

functioned as an employer. But this argument misconstrues the purpose of Minn. Stat. § 268.095, subd. 3(c). In essence, the statute ensures that the employer will receive notice of the problem and an opportunity to address the problem. O’Claire has not established that Goudy was an employee or agent of Accra Care. *See* Restatement (Third) of Agency § 1.01 (2006) (stating that “[a]gency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act”). Thus, by complaining to Goudy, O’Claire did not give Accra Care, the employer respondent in this case, actual or constructive notice of his dissatisfaction. Because the record demonstrates that Accra Care did not receive notice of the problem, it did not have a reasonable opportunity to correct the adverse working conditions and did not cause O’Claire to quit.

Because O’Claire’s reason for quitting did not constitute a good reason to quit under Minn. Stat. § 268.095 and because Accra Care did not cause O’Claire to quit, the ULJ did not err when it determined that O’Claire quit without good reason caused by the employer. Consequently, O’Claire is disqualified from receiving unemployment benefits.

II

O’Claire separately argues in his brief that the ULJ made several procedural errors at the evidentiary hearing. He claims the ULJ did not properly give O’Claire notice of who would be testifying, failed to note an important exhibit, and interrupted O’Claire during his closing statement. We conclude that the procedures O’Claire objects to do not

amount to violations of the rules that govern the evidentiary hearing and that the procedure did not affect O’Claire’s right to a fair hearing.

The legislature has delegated broad discretion to the Department of Employment and Economic Development to develop rules that govern the department’s evidentiary hearings and has declared that “[t]he rules need not conform to common law or statutory rules of evidence and other technical rules of procedure.” Minn. Stat. § 268.105, subd. 1(b) (2006); *see also* Minn. R. 3310.2922 (2007) (noting that referees are not bound by statutory and common-law rules of evidence). The department’s rules require the ULJ to follow several procedural guidelines and more generally to “exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2007). But the rules do not require a ULJ to give sua sponte notice of witnesses, take special notice of exhibits once they are admitted, or refrain from interruptions. *See* Minn. R. 3310.2914, subp. 2 (2007) (requiring party to disclose witnesses if opposing party demands disclosure); Minn. R. 3310.2921 (2007) (noting that ULJ may limit repetitious testimony and arguments). Because the hearing procedure did not violate the department’s rules or result in an unfair proceeding, we affirm the ULJ’s determination.

Affirmed.