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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1256**

Barbara R. Jones-Schroyer,
Relator,

vs.

Lake Superior College,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 14, 2012
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 26438865-5

Barbara R. Jones-Schroyer, Esko, Minnesota (pro se relator)

Lake Superior College, Duluth, Minnesota (respondent)

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

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Hudson,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she failed to give her employer a reasonable opportunity to correct the adverse working conditions that led to her quitting her job. She argues that the ULJ's findings are unsupported by law and his decision was arbitrary and capricious. We affirm.

FACTS

Relator Barbara Jones-Schroyer was an adjunct instructor at Lake Superior College. In early 2009, she was paid late three consecutive times and, after the third time, complained to her supervisor and the vice-president of the college. Her paycheck was then issued on time for the next 20 months. Then, in October 2010, it was late a fourth time, and she quit.

Jones-Schroyer set up an unemployment-insurance account with the Minnesota Department of Employment and Economic Development (DEED), but DEED determined that she is ineligible for benefits because she quit without good reason caused by her employer. Jones-Schroyer appealed to a ULJ. The ULJ did not have the name or phone number for a representative from Lake Superior College, so only Jones-Schroyer testified. The ULJ determined that Jones-Schroyer is entitled to benefits because she quit for good reason caused by her employer, observing: "We have long held that a fundamental obligation of an employer to an employee is to pay them for their labor. . . . If the employee repeatedly provides the information requested in a timely basis, and the

paycheck is repeatedly delayed, this can be considered good cause for a voluntary separation.”

Lake Superior College requested reconsideration and showed good cause for missing the hearing. A second hearing was conducted. At that hearing, testimony revealed that Jones-Schroyer’s fourth late paycheck was delayed because of a miscommunication regarding her pay rate for a particular meeting. Jones-Schroyer was generally paid \$50 per hour for instruction and curriculum development and \$25 per hour for other activities. Before this particular meeting, her supervisor told her to bill the meeting at the \$50 rate. But after Jones-Schroyer submitted her timecard, her supervisor told her that she should have billed the meeting at the \$25 rate. Jones-Schroyer thought that her supervisor would make the change on her submitted timecard, and her supervisor thought that Jones-Schroyer would make the change and then resubmit her timecard. Ultimately, Jones-Schroyer resubmitted her timecard after the deadline.

The ULJ determined that Jones-Schroyer quit without good reason caused by her employer. The ULJ found that the problem that led to the early 2009 late paychecks was corrected and the 2010 late paycheck was a separate problem. The ULJ also found that Jones-Schroyer did not give her employer a reasonable opportunity to correct the problem that led to her fourth late paycheck. Jones-Schroyer was ordered to repay the \$4,106 that she received in benefits. She requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

This court may affirm, remand, reverse, or modify the decision of the ULJ if the substantial rights of the relator may have been prejudiced because the findings or decision are affected by error of law, unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2010). We review a ULJ's factual findings in the light most favorable to the decision and will not disturb them when they are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review de novo questions of law. *Id.*

The ULJ determined that Jones-Schroyer is not entitled to benefits because she quit for reasons other than a good reason caused by her employer. An employee who quits employment is not eligible for unemployment benefits unless the employee quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2010). 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). But "[i]f 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." *Id.*, subd. 3(c) (2010). The ULJ found that Jones-Schroyer failed to give her employer reasonable opportunity to fix the problem that led to her fourth late paycheck. Jones-Schroyer raises two arguments on appeal.

I.

Jones-Schroyer states, “I respectfully don’t understand how the judge could rule differently at the [second] appeal with the same information.” This is essentially a claim that the ULJ’s decision is arbitrary and capricious. An agency determination is arbitrary and capricious “where the agency has exercised its will, and not its judgment.” *Lakeland Tool & Eng’g, Inc. v. Engle*, 450 N.W.2d 349, 353 (Minn. App. 1990). One example of an arbitrary-and-capricious decision can be found in *Boily v. Comm’r of Econ. Sec.*, 532 N.W.2d 607, 609-10 (Minn. App. 1995), *aff’d as modified*, 544 N.W.2d 295 (Minn. 1996). In *Boily*, the department of economic security conducted an audit in 1988 of Boily’s dental clinic and determined that the group of dentists working there were independent contractors. 532 N.W.2d at 608. Then, in 1993, without any changes to the structure of Boily’s clinic, the department made a redetermination that the dentists were employees. *Id.* This court reversed the department’s determination and held “the Commissioner’s decision was arbitrary and capricious. There is an absence of evidence to show the contracting dentists are employees and substantial evidence supporting the 1988 audit making a contrary determination.” *Id.* at 609.

If the ULJ had simply made a redetermination without viewing new evidence, then Jones-Schroyer’s situation would be more similar to Boily’s. But here, the ULJ conducted a second evidentiary hearing at which he heard testimony from Jones-Schroyer’s supervisor and a representative from Lake Superior College. Based on that additional testimony, the ULJ found that Jones-Schroyer’s fourth paycheck was late because of a separate mistake unrelated to the cause of the first three late paychecks.

Because the ULJ's second decision was based on additional evidence, it did not reflect the ULJ's will, but its judgment.

II.

Jones-Schroyer challenges the ULJ's factual finding that she did not give her employer a reasonable opportunity to correct the adverse working conditions. The ULJ found that the cause of Jones-Schroyer's first three late paychecks was different from the cause of her fourth late paycheck, and that, with respect to her fourth late paycheck, Jones-Schroyer failed to give a reasonable opportunity for her employer to correct the problem. The ULJ observed that she "submitted her resignation after the employer had taken steps to correct the problem." These findings are supported by the record. The finding that the cause of the first three late paychecks was different (and was corrected) is supported by the fact that there were no more problems for 20 months after Jones-Schroyer complained. The finding that the fourth paycheck delay was caused by a separate problem is supported by testimony that the fourth paycheck was withheld because of a miscommunication between Jones-Schroyer and her supervisor. Finally, the findings that the employer took steps to fix the problem that caused the fourth paycheck to be late and that Jones-Schroyer resigned before the problem could be fixed are supported by testimony from Jones-Schroyer's supervisor that, at the time of the late paycheck, there was no mechanism by which she could change the card once it was submitted. The supervisor stated, "We have since worked on that. . . . If a time card is submitted incorrectly, . . . there's a legal process to, to change it." And a witness for Jones-Schroyer testified, "[S]ometimes clarity was lacking over pay rates, exact times,

sometimes curriculum And the clarity since [Jones-Schroyer] has left has greatly improved, but that clarity has not always been a[s] transparent as I find it today.”

The ULJ’s finding that Jones-Schroyer failed to give her employer a reasonable opportunity to correct the adverse working conditions is supported by the record and is not arbitrary and capricious.

Affirmed.