

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1396**

Valerie Cleary,
Relator,

vs.

Pallet Companies, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent

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

Department of Employment and Economic Development
File No. 276852122-3

Valerie Cleary, Champlin, Minnesota (pro se relator)

Pallet Companies, Inc., St. Louis, Missouri (respondent employer)

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

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Collins,
Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because (a) she quit her employment without good reason caused by the employer and (b) she did not have a serious illness or injury that made it medically necessary for her to quit. But there is substantial evidence in the record supporting the ULJ's findings and the ULJ did not err in applying the law, and, therefore, we affirm.

FACTS

Relator Valerie Cleary was employed as an office manager for respondent Pallet Companies, Inc. (PCI) from July 2010 through April 2011. Cleary identifies a number of incidents that she argues led her to quit her employment for good reason. The first specific incident occurred in mid-February 2011, when a terminated PCI employee came into the office where Cleary was working and demanded certain paperwork. When he was informed that he would have to get his paperwork through the corporate office, the former employee became angry and when asked to leave the premises, said to Cleary and the assistant general manager "I'll kill you . . . I'll kill you both." Cleary called 911, the former employee left the PCI premises before police arrived, and Cleary heard nothing further from him.

On April 11, 2011, Tyler Kraft began work at PCI as a general manager. A few days later, Cleary took a telephonic order from a customer for pallets. The pallets were subsequently delivered on the wrong day, and the customer complained to PCI. Kraft

told Cleary of the customer's complaints in front of a visiting manager who was training Kraft that day and reprimanded her for the mistake. Cleary was embarrassed and upset about the criticism, especially since it occurred in the presence of the visiting manager.

On April 25, 2011, police officers came to PCI's office and arrested a warehouse worker. Cleary was not made aware of the reason for the arrest. Two days later, Cleary was "in shock" and alarmed to hear on the news that the worker was arrested for the 2007 murder of a woman. On April 28, the subject of the arrest of the worker came up in conversation with Kraft, and Cleary learned that Kraft had been told about the murder charge at the time of the arrest. Being a part of the management team, Cleary believed she should have been informed of the reason for the arrest at the time. She was upset that she had to hear it on the news, but admitted that knowing earlier would have had no effect on her job duties.

On April 27, 2011, Cleary saw her doctor, who noted symptoms brought on by stress at work and diagnosed her with depression for the first time. Cleary has suffered from fibromyalgia for 15 years, but this had not previously prevented her from performing her duties at work. Her doctor recommended that Cleary "look for other options for work as the current work situation has shown to have a negative impact on her health." While PCI was aware of Cleary's fibromyalgia, she did not disclose the depression diagnosis or the doctor's recommendation to anyone at PCI, nor did she request any accommodations for either medical condition.

On April 28, 2011, Kraft asked Cleary if she had filed certain paperwork, and she responded that she had not yet done so because she was busy preparing month-end

reports. Kraft chastised Cleary and told her to manage her time better. In the same conversation, Kraft also denied Cleary's request for two days off the following week. Upset, Cleary told Kraft she had had enough, left the office, and quit her employment.

Cleary applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development and was determined to be ineligible because she "did not have a good reason caused by the employer for quitting." Cleary appealed this determination, and a telephonic hearing was conducted by a ULJ at which Cleary and Kraft testified. The ULJ affirmed the denial of benefits, determining that Cleary had quit without good reason caused by the employer and no serious injury or illness made it medically necessary for her to quit. Cleary's request for reconsideration was denied, and this certiorari appeal followed.

D E C I S I O N

"We review de novo a ULJ's decision that an applicant is ineligible to receive unemployment benefits." *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). Findings of fact are reviewed in the light most favorable to the ULJ's decision, the ULJ's credibility determinations are given deference, and "we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court may "affirm the decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision is affected by an error of law or is unsupported by substantial evidence in view

of the record as a whole.” *Sykes*, 789 N.W.2d at 255; *see also* Minn. Stat. § 268.105, subd. 7(d) (2010).

I.

While determining an employee’s reason for quitting employment is a fact question for the ULJ to decide, determining whether that reason meets the statutory standard of “a good reason caused by the employer” is a legal question reviewed by this court de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). Generally, an applicant who quit his or her employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). One exception to this rule applies when “the applicant quit the employment because of a good reason caused by the employer,” *id.* subd. 1(1), defined as “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 unemployment.” *Id.*, subd. 3(a) (2010).

We first note that Cleary’s decision to quit appears to be primarily a result of her conflicts with Kraft, which does not constitute “good reason caused by the employer.” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (holding that good cause “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”); *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985). The ULJ found that Cleary’s reasons for quitting “were not so compelling or necessitous as would cause the average, reasonable individual to quit and become

unemployed,” and there is substantial evidence in the record to support this finding. Moreover, Cleary did not provide PCI with a reasonable opportunity to correct the alleged adverse working conditions before quitting, an essential prerequisite to eligibility for unemployment benefits. Minn. Stat. § 268.095, subd. 3(c).

Cleary specifically argues that she quit for good reason caused by PCI because she was subjected to a hostile work environment that included “threats of violence, verbal abuse, and fear of retaliation.” In support of this argument, Cleary points to an e-mail in which a former assistant manager of PCI complained to the corporate human resources director about the general manager and described his perception of a hostile work environment at PCI. This e-mail does not mention or involve Cleary in any way. Besides this e-mail, which of itself is insufficient to support Cleary’s allegations, there is nothing in the record to support her claims of a hostile work environment.

Cleary further argues that the workplace was “felony friendly” in that PCI hired convicted felons, a fact not disclosed to her when she started employment, and this caused her to fear for her personal safety. While Cleary discussed two incidents during the hearing related to safety (the former employee who said “I’ll kill you” and the employee arrested for murder), the ULJ did not find credible Cleary’s argument that these incidents made her fearful, concluding that “[t]he evidence does not show that PCI was ‘felony friendly,’ [or] that Cleary’s personal safety was ever in danger.” Giving deference to the ULJ’s findings, as required by *Skarhus*, 721 N.W.2d at 344, we conclude that Cleary’s claims regarding a hostile work environment and fear for her personal safety are not supported by the record and would not compel the average worker to quit,

and therefore the ULJ did not err in concluding that they do not constitute “good reason caused by the employer.”

Cleary also argues that Kraft increased her work hours, which was also a factor in her quitting. Cleary did not raise this issue at the hearing, and the ULJ did not address it. Therefore, this issue cannot be raised for the first time on appeal. *See Peterson v. Ne. Bank—Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011). The ULJ did address Cleary’s concerns about being denied her time-off request, however, and concluded that it was within Kraft’s discretion as her supervisor to grant or deny the request. This finding is supported by the record and is not erroneous. Therefore, we hold that the ULJ did not err in concluding that Cleary is not eligible for benefits by virtue of the exception of good reason caused by the employer.

II.

We next address Cleary’s argument that her diagnoses of fibromyalgia and depression made it medically necessary for her to quit. Another exception to the rule that applicants who quit employment are ineligible for benefits is when serious illness or injury makes quitting medically necessary. Minn. Stat. § 268.095, subd. 1(7). This exception only applies, however, if the applicant “informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.* The evidence in the record sustains the ULJ’s determination that Cleary was not eligible under this exception. Cleary’s testimony indicates that PCI was aware of her fibromyalgia, but she neither disclosed the depression diagnosis before quitting nor requested any accommodation for either medical condition. Therefore, we hold that the

ULJ did not err in concluding that Cleary is not eligible for benefits by virtue of the exception of medical necessity.

Affirmed.