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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2050**

Randall Dolan,
Relator,

vs.

Hursh Motors Co.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 24, 2013
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 30019218-3

Randall S. Dolan, Zumbrota, Minnesota (pro se relator)

Hursh Motors Co., Owatonna, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the determination by the unemployment-law judge (ULJ) that he is ineligible for benefits, arguing that he had good reason to quit because his work environment was hostile and offensive. We affirm.

FACTS

Relator Randall Dolan was employed as a salesperson for respondent Hursh Motors Co. From March through May 2012, Dolan received cancer treatment and was largely absent from work. During this period, Dolan regularly provided his supervisor, Duane Polson, written verification of his medical condition and communicated about when he would return to work, but Dolan believed Polson used a cold tone and did not show proper sympathy for his medical condition. Dolan also felt excluded from the sales team and singled out for criticism throughout early 2012, even after he was back at work and meeting his sales goals.

On July 2, Polson asked Dolan if he was coming to work the next day, a Tuesday. Dolan's regular day off from work was Tuesday; he reminded Polson of this and said that he was not planning to work that day. Polson responded that Dolan would have the July 4 holiday off but was expected to work on July 3. Polson also denied Dolan's request to take off the following week. Later on July 2, Polson again spoke with Dolan, stating that Dolan would not be successful unless he put in more time and made more sales, and that Hursh Motors had hired a new salesperson because Dolan was not

bringing in more business. This conversation occurred in front of other employees, which embarrassed Dolan.

Dolan did not report to work on July 3. Early that afternoon, he called company vice president Dennis Hursh to complain about his interactions with Polson the previous day. Hursh said he would investigate Dolan's concerns and call him back. Dolan subsequently received a text message from a coworker indicating that Polson told other employees that Dolan had resigned. This led to a series of phone calls involving Dolan, Polson, and Hursh, culminating in Dolan's girlfriend calling Hursh to complain that Dolan was being treated poorly. Dolan never returned to work at Hursh Motors.

Dolan applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that Dolan had been discharged and was eligible to receive benefits. Hursh Motors appealed. After an evidentiary hearing, the ULJ concluded that Dolan quit without good reason attributable to Hursh Motors and therefore is ineligible for benefits. Dolan requested reconsideration. The ULJ clarified several findings but affirmed the decision that Dolan is ineligible for benefits. This certiorari appeal follows.

D E C I S I O N

We review a ULJ's order to determine whether it is "(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." Minn. Stat. § 268.105, subd. 7(d) (2012).

An applicant who quits employment is not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception is when an applicant quits for “a good reason caused by the employer.” *Id.*, subd. 1(1). To qualify for this exception, the reason must (1) be directly related to the employment and for which the employer is responsible; (2) be adverse to the applicant; and (3) compel an average, reasonable employee to quit and become unemployed. *Id.*, subd. 3(a) (2012).

The reason why an applicant quit presents a question of fact. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (analyzing an applicant’s reason for quitting as a question of fact). We review factual findings in the light most favorable to the ULJ’s decision and will not disturb findings that have substantial support in the evidence. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an applicant’s reason for quitting constitutes good cause attributable to the employer is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). “The correct standard for determining whether [the applicant’s] concerns were reasonable is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted).

Dolan does not challenge the ULJ’s determination that he quit his employment but argues that he had good reason to do so because of a “hostile work environment.” We disagree. The ULJ found Dolan quit because he did not want to work the week of July 8 and because he felt “excluded and discriminated against by Polson.” Substantial

evidence supports these findings. Dolan's testimony, which the ULJ largely credited, establishes that Polson denied his vacation request, criticized Dolan's performance in front of other employees on July 2, excluded Dolan from sales team activities, and was unsympathetic to Dolan's medical condition. These circumstances, which disappointed Dolan and made him feel uncomfortable, may have provided good personal reasons for him to leave Hursh Motors. But they do not constitute the type of adverse employment condition that would cause an average reasonable employee to quit and become unemployed. *See Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (stating that a good reason for quitting "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"); *see also Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (stating that a good personal reason does not equate with good reason to quit); *cf. Nichols*, 720 N.W.2d at 595-97 (holding that coworker's pattern of reckless, aggressive, and openly hostile behavior, unmitigated by employer despite complaints, was good reason to quit). On this record, we conclude Dolan did not quit for good reason attributable to Hursh Motors and therefore is ineligible for unemployment benefits.¹

Affirmed.

¹ Alternatively, Dolan argues that he is eligible for benefits because he quit due to serious illness, pointing to his time off for cancer treatment. *See* Minn. Stat. § 268.095, subd. 1(7) (providing that an employee is eligible for benefits if he quit because serious illness or injury made quitting medically necessary). Because Dolan testified that he had completed all his treatments and was medically able to work at the time the separation occurred, the serious-illness exception is inapplicable.