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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1505**

Stacey J. Jorgenson,
Relator,

vs.

Recover Health Services LLC,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed June 2, 2014
Affirmed
Johnson, Judge**

Department of Employment and
Economic Development
File No. 31126994-3

Anjaleck M. Flowers, Minneapolis, Minnesota (for relator)

Recover Health Services LLC, Minnetonka, Minnesota (respondent)

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

Considered and decided by Johnson, Presiding Judge; Smith, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Stacey J. Jorgenson was employed by Recover Health Services LLC until she quit. She sought unemployment benefits, but the department of employment and economic development determined that she is ineligible because she quit her employment without a good reason caused by her employer. We affirm.

FACTS

Jorgenson was employed as director of nursing by Recover, which provides in-home health-care services, from January 2012 to April 2013. Her duties were to supervise all clinical staff and to ensure that her employer delivered services in compliance with licensing guidelines, medical standards, and agency policies and procedures. She was a salaried employee and typically worked between 50 and 70 hours per week.

During Jorgenson's brief tenure, Recover experienced high turnover among the nurses and home-health aides who were under Jorgenson's supervision. As a result, Jorgenson often substituted for absent nurses and aides, which increased the number of hours she worked. In December 2012, Jorgenson gave notice of her resignation because she was dissatisfied with her hours. But Jorgenson also spoke with her supervisors about

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

the possibility of continuing her employment. She was not promised a reduction in hours. She was told that she “was salaried and . . . would need to do what [she] needed to do in order [to] complete the tasks.” One supervisor told Jorgenson that she could pursue a different position within Recover if she did not want to be director of nursing. Before the end of the notice period, Jorgenson rescinded her resignation and returned to work as director of nursing, without requesting a change in her position.

Thereafter, Jorgenson, who has diabetes, experienced some problems with her health. Her doctor became concerned that long hours and stress were exacerbating her condition. In February 2013, Jorgenson was absent from work for approximately one week. After she returned to work, Jorgenson again talked to a supervisor about her hours. Her supervisor expressed concern for Jorgenson’s health and offered to reduce some of Jorgenson’s job duties, but Jorgenson declined the offer.

On March 25, 2013, Jorgenson submitted a two-week notice of her resignation. Her notice did not state why she was quitting. After she submitted her notice of resignation, she requested a leave of absence and asked about a different position. Jorgenson’s last day as an employee of Recover was April 5, 2013.

Jorgenson promptly applied for unemployment benefits. The department initially determined that she is ineligible. After Jorgenson filed an administrative appeal, an unemployment-law judge (ULJ) determined that Jorgenson did not have a good reason to quit caused by her employer and did not quit because she had a serious medical condition. Jorgenson moved for reconsideration, arguing that she quit because Recover did not provide her with an accommodation under the Americans with Disabilities Act

(ADA) and did not give her information about taking a leave of absence under the Family and Medical Leave Act (FMLA). The ULJ denied the request for reconsideration and affirmed her prior ruling. Jorgenson appeals by way of a petition for a writ of certiorari.

D E C I S I O N

Jorgenson argues that the ULJ erred by determining that she is ineligible for unemployment benefits because she quit her employment with Recover without a good reason caused by her employer.

This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. *See* Minn. Stat. § 268.105, subd. 7(d) (2012). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed, and this court defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2012). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a). But an employee who quits employment is eligible for benefits if the employee quit "because of a good reason caused by the employer." *Id.*, subd. 1(1). 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). These three requirements “must be applied to the specific facts of each case.” *Id.*, subd. 3(b). An employee subject to “adverse working conditions . . . must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions.” *Id.*, subd. 3(c).

Jorgenson contends that she had a good reason to quit caused by her employer because Recover did not comply with the ADA or the FMLA. Specifically, she contends that Recover violated the ADA by not offering her a reasonable accommodation in light of her health condition and violated the FMLA by not notifying her of her right to take a leave of absence. Jorgenson does not challenge the ULJ’s separate finding that she did not quit because of a serious medical condition.

Assuming for the moment that a violation of the ADA or the FMLA would qualify as an “adverse working condition[],” *see* Minn. Stat. § 268.095, subd. 3(c), Jorgenson’s argument fails because the ULJ found that she quit for different reasons. The ULJ found that Jorgenson quit because “she was overwhelmed by the work expectations and work hours with the lack of staff to meet the needs of clients and because of her health concerns.” In denying Jorgenson’s request for reconsideration, the ULJ found more specifically that Jorgenson did not quit because of any violation of the ADA or the FMLA. An employee’s reason for quitting is an issue of fact, which cannot be overturned “if the evidence reasonably tends to sustain them.” *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). On appeal, Jorgenson does not challenge any of the ULJ’s factual findings or the evidence supporting those findings.

Thus, we take as given that Jorgenson did not quit her employment because of a violation of the ADA or the FMLA.

Furthermore, the record would not support the conclusion that Recover violated the ADA or the FMLA. The record does not show conclusively that Jorgenson's diabetes "substantially limits one or more major life activities," which is required by the ADA. *See Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 723-24 (8th Cir. 2002) (quoting 42 U.S.C. § 12102(2)(A) (2012)). The record also does not show conclusively that Jorgenson provided Recover with notice that a reasonable accommodation was necessary. *See Ballard v. Rubin*, 284 F.3d 957, 962 (8th Cir. 2002). Indeed, the ULJ found that Jorgenson did not request an accommodation until after she resigned, and Jorgenson does not challenge this finding. Nonetheless, Recover previously had offered to reduce Jorgenson's job duties, but she declined the offer. Similarly, the record does not show conclusively that Recover breached a duty to inform Jorgenson of her FMLA rights. *See* 29 C.F.R. § 825.300(b)(1) (2013). Because the record does not support Jorgenson's contention that Recover violated the ADA or the FMLA, her argument for reversal is without merit.

As DEED notes, the issue before the ULJ, and thus the issue on appeal, is not whether Recover violated federal statutes but whether Jorgenson had a good reason to quit caused by her employer. *See* Minn. Stat. § 268.095, subd. 3(a). If we construe her appellate brief broadly, the issue would be whether Jorgenson had a good reason to quit because Recover required her to work long hours without offering her an accommodation or a leave of absence. The ULJ noted that Jorgenson did not have a contract or other

promise that her hours would be limited to 40 hours per week. The ULJ found that Jorgenson failed to prove that her hours were “so continuously excessive . . . for the position and within the industry.” The ULJ also found that Jorgenson refused offers of assistance that would have reduced her workload. The ULJ determined that the terms and conditions of the position were not so adverse that an average reasonable employee would quit. Accordingly, the ULJ concluded that she did not have a good reason to quit caused by her employer.

The ULJ’s findings and conclusion are consistent with the law. An employee does not have a good reason to quit caused by the employer merely because the employee is “simply frustrated or dissatisfied with his working conditions.” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). The ULJ’s findings support the conclusion that the demands of Jorgenson’s position were not unreasonable or excessive. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978). Furthermore, Jorgenson was required to “complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions” about which she complains, namely, the lack of an offer for accommodation or a leave of absence. *See* Minn. Stat. § 268.095, subd. 3(c). But the record reveals that Jorgenson never asked for an accommodation or a leave of absence before she submitted her resignation notice. Thus, the ULJ did not err by determining that Jorgenson did not have a good reason to quit caused by her employer.

In sum, Jorgenson is ineligible for unemployment benefits.

Affirmed.