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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1822**

Kimberly A. Thomas,
Relator,

vs.

US Bank National Association,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 30, 2014
Affirmed
Smith, Judge**

Department of Employment and Economic Development
File No. 31106870-3

Kimberly A. Thomas, Mountain Iron, Minnesota (pro se relator)

Lee B. Nelson, Christine E. Hinrichs, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent DEED)

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

UNPUBLISHED OPINION

SMITH, Judge

We affirm the decision of the unemployment law judge (ULJ) that relator is ineligible for unemployment benefits because relator quit her employment and fails to satisfy either of the relevant statutory exceptions that would allow for benefit eligibility.

FACTS

Relator Kimberly A. Thomas worked for respondent US Bank National Association from May 2007 to March 2013. In June 2012, US Bank promoted her from Teller Coordinator to Sales and Service Manager; this promotion made her second-in-command at the branch level. Thomas's transition into her new position proved difficult.

On September 14, 2012, the Regional Operations Manager emailed Thomas and the branch manager about appropriate utilization of a specialist who worked out of their branch. In response, on October 1, 2012, Thomas sent a lengthy email to the Regional Operations Manager, the specialist, the branch manager, and the district manager. In the email, Thomas first criticized the specialist, concluding, "YOU are just as much at fault as we are because YOU have never told us no and say you can help." Thomas went on to inform management that she had recently been diagnosed with narcolepsy, stating that the condition "is treatable with meds, but not curable," and "life sucks but it could be worse." Thomas then complained about the lack of training and support she was receiving in her new position, and stated that when she was offered the promotion she "accept[ed] thinking I really hate change and I'm not confident in myself, but the [Teller Coordinator] thing wasn't so bad and everyone thought I could do this job." Finally,

Thomas referred to the branch as “a toxic waste dump,” stated that she “keep[s] hoping [the branch manager] will fire [her] so this nightmare will come to an end,” and told management to “[w]rite [her] up, fire [her], call HR” because she “almost [doesn’t] even care anymore.”

On December 7, 2012, Thomas sent a self-described “unprofessional” text message to a subordinate employee. The lengthy text message included profanity and criticized the subordinate as an employee and as a “friend.”

As a result of the October 1 and December 7 communications, US Bank issued Thomas a written warning.¹ The warning outlined US Bank’s “expectation going forward,” and reminded Thomas “about the Employee Assistance Program/LifeWorks (EAP), where counselors are available 24 hours a day to talk with you about specific problems.”

Amidst the above issues, in November 2012, Thomas inquired about potential accommodations for her medical situation. US Bank offered Thomas a later daily start time. Thomas accepted, and did not request further accommodation.

In January 2013, Thomas contacted US Bank’s human resources department, seeking advice regarding the subordinate employee involved in the December 7 incident; in her email, Thomas described her working relationship with this employee in great detail. Thomas also mentioned that she was “still working late and still stressed,” and she was concerned about completing her work, but commented that she and the branch

¹ The record establishes that such conduct would typically result in termination of the employee’s employment, but in light of Thomas’s job transition, US Bank decided to issue her a written warning.

manager were “making progress on some things.” She also asked the human resources representative whether it would be “in this branch’s best interest for [her] to resign.”

On March 28, 2013, after assisting a customer with a complicated matter, Thomas informed the branch manager that she was briefly going to step out.² Before Thomas left his office, the branch manager raised several concerns about her job performance. Ultimately, Thomas asked the branch manager why he did not “just fire” her, and the branch manager responded, “if you’re so unhappy, why don’t you just quit.” Thomas replied, “I think I will,” and submitted her resignation within two hours.

Thomas applied for unemployment benefits and, in response to a request for information, advised respondent Department of Employment and Economic Development (DEED) that her doctor stated that with medication her narcolepsy “shouldn’t affect [her] job.” An administrative clerk from DEED determined that Thomas was ineligible because “[t]he evidence does not show that [her] condition made it medically necessary to quit.” Thomas appealed the determination. A ULJ conducted a hearing, considered two statutory exceptions to the general principle that employees who quit are ineligible for unemployment benefits, and found that neither exception was satisfied. The ULJ determined that Thomas is ineligible for unemployment benefits. Thomas requested reconsideration, and the ULJ affirmed his initial findings and decision.

² Thomas was experiencing low blood sugar and planned to purchase lunch from the deli across the street. But she did not explain this situation to the branch manager.

DECISION

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are “(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).

A ULJ’s factual findings are viewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But whether the ULJ’s findings establish that the applicant falls within a statutory exception to ineligibility presents a question of law, which we review de novo. *See, e.g., Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594-95 (Minn. App. 2006).

The purpose of the Minnesota Unemployment Insurance Law is to assist those who are “unemployed through no fault of their own,” Minn. Stat. § 268.03, subd. 1 (2012), and an employee who quits employment is generally ineligible for unemployment benefits, Minn. Stat. § 268.095, subd. 1 (2012). But the law is “remedial in nature and must be applied in favor of awarding unemployment benefits,” and any provision precluding receipt of benefits must be narrowly construed. Minn. Stat. § 268.031, subd. 2

(2012). Here, it is undisputed that Thomas quit. Therefore, Thomas is eligible only if an exception applies. We address the two relevant exceptions in turn.

I.

An employee who quits employment is eligible for unemployment benefits if the employee quit because the employee's "serious illness or injury made it medically necessary" to quit and the employee "inform[ed] the employer of the medical problem and request[ed] accommodation and no reasonable accommodation [was] made available." Minn. Stat. § 268.095, subd. 1(7).

Here, the ULJ found that Thomas was neither "denied any requests for accommodations in connection with any medical condition" nor "advised by a medical professional that she should quit her job." Both findings are supported by the record and Thomas does not challenge either one; rather, she argues that the evidence establishes that US Bank was *aware* of her medical condition. Although the record supports Thomas's assertion (notably, US Bank provided her with an accommodation for narcolepsy), the statutory exception requires more than just an employee informing the employer of a medical problem. *See id.* Because Thomas failed to establish that it was medically necessary for her to quit her employment, and because she was not denied a requested accommodation, the ULJ did not err by concluding that she does not satisfy the serious-illness-or-injury exception. Thomas is not entitled to unemployment benefits on this ground.

II.

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 employment.” *Id.*, subd. 3(a) (2012). These three requirements “must be applied to the specific facts of each case.” *Id.*, subd. 3(b) (2012). Additionally, the employee must have complained to the employer and given the employer a reasonable opportunity to correct the adverse working conditions. *Id.*, subd. 3(c) (2012). “A good personal reason [to quit] does not equate with good cause.” *Kehoe v. Minn. Dep’t of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted).

Here, the ULJ analyzed two reasons that potentially fall within the ambit of the statutory exception. First, the ULJ considered Thomas’s struggles with the branch manager and the subordinate employee involved in the December 7 incident. Because this exception “does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with [her] working conditions,” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986), the ULJ did not err by concluding that this issue does not constitute a good reason caused by the employer.

Second, the ULJ considered the long hours that Thomas worked each week. The ULJ found that “during 2013 [Thomas’s] grievances centered mainly on other topics,”

and “Thomas did not plan to resign employment until being confronted by [the branch manager] on her last day of work.” In support of these findings, the record demonstrates that although Thomas vented about her long hours in late 2012—via forums that resulted in a written warning—Thomas last mentioned this issue to human resources on January 12, 2013, at which time she stated she was “still working late and still stressed,” but she and the branch manager were “making progress on some things.” The ULJ’s findings are supported by the record and, therefore, Thomas fails to establish that she quit *because of* her long hours. Accordingly, regardless of whether the long hours may provide a good reason caused by the employer, this exception does not apply. *See* Minn. Stat. § 268.095, subd. 1(1). Moreover, it is questionable whether the unprofessional communications in which Thomas raised her complaints provided US Bank with a “reasonable opportunity” to correct any adverse working conditions. *See* Minn. Stat. § 268.095, subd. 3(c). The ULJ did not err by concluding that Thomas does not satisfy the good-reason-caused-by-the-employer exception.

Because Thomas quit her employment and does not qualify for either relevant exception, the ULJ correctly concluded that Thomas is ineligible for unemployment benefits.

Affirmed.