

NO. A05-2165

State of Minnesota
In Court of Appeals

Shirley Nichols,

Relator,

v.

Reliant Engineering & Manufacturing, Inc.,

Respondent,

and

Department of Employment & Economic Development,

Respondent.

**BRIEF OF RESPONDENT
RELIANT ENGINEERING & MANUFACTURING, INC.**

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STATEMENT OF LEGAL ISSUE

Within a half hour of complaining to the office manager about a dispute with a co-worker, Shirley Nichols (“Nichols”) gathered her belongings and left her job at Reliant Engineering & Manufacturing (“Reliant”), never to return. Despite Nichols’ haste, Reliant had already begun to investigate the complaint. The unemployment law judge found that, because Reliant acted appropriately in promptly investigating and responding to Nichols’ complaint, Nichols quit her job without good reason caused by her employer. As such, Nichols was disqualified from unemployment benefits. The question on review is whether the record reasonably supports the unemployment law judge’s decision that Nichols is disqualified from receiving benefits.

Apposite Statute and Cases:

Minn. Stat. § 268.095 (2006 Supp.). (Respondent’s App. (“RA”) 31).

Andrews v. Shervey Agency, Inc., 2005 WL 1021261 (Minn. Ct. App.). (RA 35.)

Hanegraaf v. McDonough Truck Line, Inc., 2004 WL 835394 (Minn. Ct. App.). (RA 38.)

Larson v. Department of Economic Security, 281 N.W.2d 667 (Minn. 1979)

Yaggy v. Advocates Against Domestic Abuse, 2005 WL 1153738 (Minn. Ct. App.). (RA 31.)

STATEMENT OF THE CASE

This appeal arises from an unemployment law judge’s decision and affirmation, upon request for reconsideration, that Relator, Shirley Nichols (“Nichols”) voluntarily quit her employment without good reason caused by the employer and is disqualified from receiving benefits.

On August 8, 2005, the Department of Employment and Economic Development determined that Nichols was not disqualified from receiving employee benefits. Reliant appealed that decision. Unemployment Law Judge Clarence A. Anderson conducted a hearing on the matter, and, on September 15, 2005, issued the Findings of Fact and Decision, determining that Nichols was disqualified from receiving unemployment benefits because she had voluntarily quit her employment without good reason caused by Reliant. (App. to Department's Brief ("DA") 5-6.) Nichols filed a request for reconsideration on September 21, 2005. (DA 1.) The unemployment law judge reconsidered, and, on October 12, 2005, issued an Order of Affirmation, affirming the September 15 decision. (*Id.*) Nichols appeals from that Order.

STATEMENT OF THE FACTS

Nichols worked as a receptionist and administrative assistant for Reliant from February 17, 1997, until July 21, 2005. (DA 3; RA 6.) Starting in early 2004, Nichols began to have problems with a co-worker, press brake operator Scott Stach ("Stach"). (DA 3; RA 6-7.) Nichols cites to three specific incidents with Stach before she quit her job. Each time Nichols complained, Reliant promptly investigated and then disciplined Stach with either a written or verbal warning depending on the severity of the incident. (DA 3; RA 20.) The last incident occurred on July 21, 2005. (DA 4; RA 16-17.) Less than half an hour after the incident, Nichols gathered her belongings and left work, never to return, giving Reliant no time to address her complaint. (*Id.*)

Nichols' first allegation relates to a Friday in early 2004. (DA 3; RA 6.) On that Friday, Stach allegedly called Nichols a "fuckin' bitch" in front of several other co-

workers. (DA 3; RA 7.) The next Monday, Stach approached Nichols and tried to apologize to her, but she would not accept his apology unless he made it in front of the other co-workers present during the incident. (DA 3; RA 7-8.) Stach merely walked away. (*Id.*) After that incident, Nichols believed that Stach let doors shut on her, watched her, and used inappropriate language to her. (DA 3; RA 8.) Each time Nichols complained about Stach, Reliant's vice-president Phil Askren ("Askren") would give Stach a verbal or written warning. (DA 3.)

Nichols claims that a second incident occurred more than a year later, in May or June of 2005. (DA 3; RA 8.) Nichols was standing near the press brakes, and Stach quickly backed up a forklift and almost hit Nichols. (DA 3-4; RA 8.) Nichols believed this was deliberate and complained to the office manager, Pam Perales ("Perales"). (DA 4; RA 9.) Perales began to investigate the incident, but, before the investigation had a chance to proceed, Nichols confronted Stach herself, resulting in a heated exchange between the two. (DA 4; RA 13.) Nichols returned to her desk crying; Reliant's president saw her crying and assured Nichols that something would be done. (DA 4; RA 9.) Again, Askren met with Stach. (DA 4; RA 20-21.)

Perales testified that, after this incident, Nichols told her that she wished Reliant would lay her off so she could collect unemployment. (RA 25.) Nichols disputed this testimony. (RA 26.) Askren, however, corroborated Perales' testimony, stating that, on a couple different occasions, Nichols commented that she wished she would get laid off so she could collect unemployment. (RA 28.) The unemployment law judge made no findings on this issue.

Nichols' final allegation relates to the day she left Reliant: Thursday, July 21, 2005. (DA 4; RA 9.) While Nichols was in the break room, Stach entered the room by kicking the door open. (DA 4; RA 10.) It was common for workers to kick this door open, although Reliant did not approve of this behavior. (DA 4; RA 22.) Nichols stated that she was scared, testifying that "I am kind of a jumpy person anyway." (RA 10.) Stach immediately apologized; again, Nichols refused to accept his apology. (DA 4; RA 23-24.)

Nichols complained to Perales, telling her that Stach deliberately kicked in the door at her. (DA 4; RA 10.) Perales immediately attempted to investigate the incident, but received a conflicting story from Stach. (DA 4; RA 16.) Stach said that it was an accident, that he did not know that Nichols was in the break room, and that he apologized to Nichols immediately. (*Id.*) Upon questioning by the judge, Nichols admitted that Stach had apologized to her right away. (RA 23-24.)

Nichols, unwilling to wait for Reliant's investigation in any event, went to confront Stach herself, resulting in a heated exchange between them. (DA 4; RA 11.) Nichols testified that, upon returning from her confrontation with Stach, she saw that Stach's supervisor and Perales were meeting. (RA 11-12.) Nichols asked what was going to be done. (*Id.* at 12.) Reliant told Nichols that they were going to have a general employee meeting about kicking doors and that they would be meeting with Stach individually after that meeting. (DA 4; RA 12.) Nichols told Perales she could not work there any more and would be back on Monday to get the rest of her things. (RA 17.) Perales went again to talk to Askren; when she returned, Nichols was already gone. (*Id.*)

There was only half an hour between when the break room incident happened and when Nichols took her things and left. (RA 16.)

Nichols did not come to work or call in regarding her absence on Friday, July 22, or Monday, July 25. (DA 4; RA 17.) The unemployment law judge found that this conduct constituted a “quit by job abandonment.” (DA 5.)

Perales testified that she tried to call Nichols at home five separate times on that Friday, but that she always received a busy signal. (RA 17.) Nichols testified that she was at home on her computer that Friday, and that she never received the call. (*Id.* at 27.) She does not have caller identification, so she could not verify whether Perales had called her home. (*Id.*) After being unable to reach Nichols, Reliant sent her final paycheck to her home along with a note acknowledging that Nichols had terminated her employment. (*Id.* at 12-13.)

At the hearing, the unemployment law judge asked Nichols, “[W]as there anything that Reliant could have done other than discharging [Stach] that would have satisfied you[?]” (RA 24.) Her answer was “No.” (*Id.*) There was conflicting testimony as to whether Nichols knew of Reliant’s discipline of Stach. Perales testified that she told Nichols that Stach had received warnings, including a written warning; Nichols testified that she never received any feedback about her complaints. (RA 24-26.)

The unemployment law judge found that there was “clearly a difficult relationship between Nichols and Stach, but much of it was a ‘he said, she said’ situation, where Nichols made allegations that Stach denied and that could not be confirmed upon investigation by Reliant.” (DA 5.) The judge found that in at least two of the incidents,

“Nichols confronted Stach personally rather than allowing Reliant to deal with the situation, and Stach then yelled at her to get away.” (*Id.*) Moreover, “Reliant did investigate each of the incidents and warned Stach.” (*Id.*) The judge further concluded that had Reliant informed Nichols of the specific action taken against Stach, they may have been violating Stach’s right to confidentiality. (*Id.*) On the day that Nichols quit, Reliant was still investigating the situation when Nichols abruptly left work. (*Id.*) Therefore, the “preponderance of the evidence is that Reliant acted appropriately in investigating and acting on Nichols’ complaints, even though she was not satisfied with the result.” (*Id.*) Based on these findings, Judge Anderson concluded that Nichols quit her employment and that no statutory exception to her disqualification applied. (*Id.*)

Nichols filed a request for reconsideration of the decision, and the unemployment law judge affirmed his earlier ruling. (Order of Affirmation, DA 1.) Nichols appeals that affirmation, continuing to argue the underlying facts of the matter.

ARGUMENT

I. Standard of Review.

Under Minnesota Statutes section 268.105, subdivision 7, the Court of Appeals may reverse a determination of unemployment benefits under specified grounds, including where the petitioner’s rights may have been prejudiced because there is an error of law or the decision is “unsupported by substantial evidence in view of the entire record as submitted.” (Supp. 2006). There is to be “no presumption of entitlement or nonentitlement to unemployment benefits.” Minn. Stat. § 268.069, subd. 2. (Supp. 2006).

When reviewing an unemployment law judge's determination of benefits, the court is to accord considerable deference to the judge's findings. *Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 367 (Minn. Ct. App. 2000). Factual determinations are not to be disturbed if the evidence reasonably tends to sustain the findings. *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 204 (Minn. Ct. App. 2004). The question of whether an employee had a good reason to quit is a question of law that is reviewed de novo. *Edward*, 611 N.W.2d at 367.

In this matter, the unemployment law judge's factual determinations are well supported by the record; each of his findings is supported directly by testimony given at the hearing. Relying on these findings, the judge's legal conclusion that Nichols is disqualified from receiving unemployment benefits is supported by substantial evidence.

II. Nichols Quit her Job and is Disqualified from Receiving Unemployment Benefits.

As an initial matter, Nichols is disqualified from receiving unemployment benefits. On this point, the law and the facts are clear. Minnesota Statutes section 268.095, subdivision 1, sets out the standard for disqualification in clear language: "An applicant who quit employment shall be disqualified from all unemployment benefits." (Supp. 2006.) "Quit" is further defined to occur "when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a). Whether an employee quit or was discharged is a question of fact. *Hendricks & Lamers, Ltd. v. Vadnais*, 389 N.W.2d 262, 264 (Minn. Ct. App. 1986).

Here, the unemployment law judge found that Nichols quit her job by abandonment. The facts are undisputed. On July 21, in the middle of the day, Nichols gathered most of her personal belongings and left work. (DA 4; RA 16.) Over the next two work days, she did not report to work, nor did she call in regarding her absence. (DA 4; RA 17.) Nichols decided when to end her employment; Reliant did not. It is undisputed that Nichols quit her job at Reliant. Under Minn. Stat. § 268.095, she is, therefore, disqualified from receiving unemployment benefits.

III. There Was No Good Reason Caused by Reliant for Nichols to Quit her Job.

The unemployment benefits statutes provide for several exceptions to disqualification. Only one exception is at issue here, namely, that “the applicant quit the employment because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1). There are two elements to this exception: there must be a *good* reason, and the reason must be *caused by the employer*. The employee bears the burden of proof in establishing this exception. *Hein v. Precision Assoc., Inc.*, 609 N.W.2d 916, 918 (Minn. Ct. App. 2000). Nichols failed to meet her burden as to both elements. Therefore, the unemployment law judge ruled against her and this court should affirm his ruling.

A. Nichols Lacked a Good Reason to Quit Her Job.

The statute defines a good reason caused by the employer as one “that is directly related to the employment and for which the employer is responsible,” “that is adverse to the worker,” and “that would compel an average, reasonable worker to quit and become unemployed rather than remaining in employment.” Minn. Stat. § 268.095, subd. 3(a). Courts often focus on the “average, reasonable worker” language, concluding that the

exception does not protect the employee who is hyper-sensitive or who is experiencing a personality conflict with a co-worker or supervisor.

One such case that addresses both issues is *Hanegraaf v. McDonough Truck Line, Inc.*, 2004 WL 835394 (Minn. Ct. App.). (RA 38.) In *Hanegraaf*, the office manager lost her temper and swore at the employee on at least two separate occasions. *Id.* at *1. During one of those occasions, the office manager was “screaming, swearing, and using hand gestures pointing at the paperwork, all within a foot of [the employee’s] face.” *Id.* One of the company owner’s told the employee that she was a valuable employee and the office manager should not be taking her anger out on her in that way. *Id.* The company held a meeting to address the issue, but the employee was dissatisfied with the outcome and quit. *Id.* Although the court found that the office manager did swear and yell at the employee, it stated that the conduct only happened twice, that the employee “has a special sensitivity to one or more swear words,” and that the employee was simply “frustrated or dissatisfied with her working conditions during the isolated situations at issue.” *Id.* at *2. The *Hanegraaf* court went on to state that “[n]o business can avoid error, conflict, or occasional unpleasanties,” and concluded that “an average, reasonable person employed in the night office of a trucking firm would not be compelled to quit and become unemployed because of an aggressive approach to work related issues by the employer.” *Id.*

The situation here is similar to *Hanegraaf*. Nichols only pointed to three specific incidents with one co-worker in over a year, that co-worker apologized after two of the incidents, and Nichols herself testified to her own special sensitivity, describing herself as

a “jumpy person.” (RA 10.) The conduct here is not that which would compel an average, reasonable person to quit; therefore, it does not constitute a good reason under the statute.

Moreover, a mere personality conflict is insufficient to establish a “good reason” under the statute. In *Yaggy v. Advocates Against Domestic Abuse*, the employee alleged that her co-director, among other things, told her to “‘shut up and just listen’ and that ‘you have never seen me backed into a corner and, believe me, you never want to.’” 2005 WL 1153738, at *1 (Minn. Ct. App.). (RA 50.) The employee alleged that the co-director gave her threatening glares and used a vulgar tone with her. *Id.* at *3. This was not harassment, but a personality conflict, and “[p]ersonality conflicts do not constitute good cause.” *Id.* See also *Malinsky v. Caryn*, 2003 WL 22390073, at *3 (Minn. Ct. App.) (“Good cause attributable to the employer does not include situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his or her working conditions.”). (RA 41.)

Stach and Nichols did not have a supervisory relationship. However, even when the conflict is with one’s direct supervisor, the courts will not allow a mere personality conflict to support an employee’s decision to quit her job. In *Trego v. Hennepin County Family Day Care Association*, the employee had difficulties with the director, alleging, among other things, that the director had called the entire staff “incompetent and stupid.” 409 N.W.2d 23, 24 (Minn. Ct. App. 1987). The Minnesota Court of Appeals affirmed a denial of unemployment benefits, relying on precedent that “an employee’s irreconcilable

differences with the employer—i.e. a personality conflict—does not constitute good cause to quit.” *Id.* at 26, citing *Bongiovanni v. Vanlor Inv.*, 370 N.W.2d 697, 699 (Minn. Ct. App. 1985). See also *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. Ct. App. 1986) (affirming a denial of benefits because “[u]nsatisfactory working conditions and a poor relationship with a supervisor did not give [the employee] good cause to quit”).

As the unemployment law judge found, Nichols and Stach had a difficult relationship. (DA 5.) They had a personality conflict and disliked each other. This does not rise to the level of a good reason “that would compel an average, reasonable worker to quit and become unemployed.” Minn. Stat. § 268.095, subd. 3(a). Judge Anderson properly denied Nichols’ claim for unemployment benefits because her conflict with Stach was insufficient to establish good reason to quit caused by the employer.

It should be noted that even if there is a good personal reason to quit one’s job, there may not be a good reason to quit under the statutory exception that would entitle one to unemployment benefits. See *Wadsworth v. US Federal Employees*, 2004 WL 614844 *2 (Minn. Ct. App.). (RA 48.) As a side note, Nichols now asserts that she did have a good reason to quit her job because she feared for her safety. (Relator’s Br. 2.) There are significant credibility problems with this assertion. After two of the alleged incidents, Nichols did not wait for Reliant to handle her complaint; rather, she went after Stach herself and confronted him directly with her complaints. (DA 5; RA 11, 13.) These actions belie any real fear. Moreover, Nichols now relies on a rumor she heard that Stach may have threatened to shoot someone if he got fired. (Relator’s Br. 2.) Review of the transcript, however, shows that she heard this rumor several days after she

quit her job at Reliant. (RA 13.) She certainly could not have relied on that rumor when she decided to quit her job on July 21.

An instructive case on this point is *Larson v. Department of Economic Security*, 281 N.W.2d 667 (Minn. 1979). In *Larson*, the conduct at issue was relatively severe. The employee, Larson, alleged that his coworkers spat on him and taunted him nightly. *Id.* at 668. He reported the spitting incident to his employer who promised to speak to the coworkers. *Id.* Nonetheless, the conduct continued. *Id.* The coworkers continued to taunt him, they threw cups at him, and one hit him in the stomach. *Id.* Larson was a physically small man with a speech impediment, and, at least one of his coworkers was larger than him. *Id.* at 669. Nonetheless, he failed to report any of the subsequent incidents to his employer. *Id.* One day, Larson simply quit. *Id.* at 668. He applied for unemployment benefits, but was denied because he quit without good reason caused by his employer. *Id.* Larson argued that he had good cause to quit because he was in reasonable fear for his health and safety. *Id.* at 669. The Minnesota Supreme Court affirmed the denial of benefits, concluding that reasonable fear alone was insufficient to establish a statutory “good reason,” especially when Larson failed to give the employer an opportunity to correct the situation. *Id.* at 669. Similarly, Nichols did not have a good reason to quit.

B. Nichols Gave Reliant No Opportunity to Respond: Her Decision to Quit her Job was not Caused by Reliant

The *Larson* case also supports the final reason supporting the unemployment law judge’s denial of benefits to Nichols: like Larson, Nichols failed to give Reliant an

opportunity to address her complaint. Even if an employee has good reason to quit under the statute, if that reason relates to adverse working conditions, the employee “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.” Minn. Stat. § 268.095, subd. 3(c). The unemployment law judge found that Nichols had complained to Reliant about Stach. (DA 3.) Each time she complained, Reliant would give Stach verbal or written warnings, depending on the severity of the incident. (*Id.*) Therefore, “Reliant acted appropriately in investigating and acting on Nichols’ complaints.” (*Id.*)

The facts and the law support the unemployment law judge’s determination that Reliant responded appropriately to Nichols’ complaints. The record contains ample evidence that Reliant investigated Nichols’ complaints about Stach and then gave Stach written or verbal warnings when appropriate. (RA 20, 25-26.) A warning is often an appropriate response. *See, e.g., Wadsworth*, 2004 WL 614844 at *2 (finding a warning to the alleged offender as a reasonable response to an employee complaint) (RA 48); *Biegner v. Bloomington Chrysler/Plymouth, Inc.*, 426 N.W.2d 483, 486 (Minn. Ct. App. 1988) (finding that speaking to the offending employees and telling them to stop was an appropriate response to an employee complaint).¹

¹ Some responses may not be sufficient. For example, simply telling an employee to take the offending conduct as a joke, *Dura Supreme v. Kienholz*, 381 N.W.2d 92, 95 (Minn. Ct. App. 1986), or telling the employees to get along, *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 837 (Minn. Ct. App. 1987), may be insufficient. Deferring to a complaining employee’s request not to investigate would also be insufficient. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. Ct. App. 2000). Here, Reliant

Here, the only response Nichols was willing to accept was Stach's termination. This was made clear in her testimony that the only thing that would have made her stay at her job was if Reliant fired Stach. (RA 24.) An employee is not, however, entitled to dictate the appropriate outcome of a complaint. *See, e.g., Nygaard v. Halstad Telephone Co.*, 2005 WL 832051, at *4 (Minn. Ct. App.) (upholding conclusion that it was unreasonable to condition return to work upon termination of another employee) (RA 44); *Hanegraaf*, 2004 WL 835394, at *1 (affirming denial of benefits when employee quit after employer refused to adopt her plan of action to resolve the dispute with her supervisor) (RA 38). Reliant was not obligated to discipline Stach according to Nichols' wishes. It investigated promptly and disciplined him appropriately each time. Reliant's warnings to Stach were timely and appropriate responses to Nichol's complaints.

Nichols' last complaint requires a somewhat different analysis. On the day she quit her job, Nichols made a new complaint, but than left abruptly before Reliant had a reasonable opportunity to fully investigate and respond to her complaint. (DA 3.) In *Andrews v. Shervey Agency, Inc.*, the applicant for unemployment benefits also complained on the very same day she quit her job. 2005 WL 1021261, at *1 (Minn. Ct. App.). (RA 35.) Weeks before she quit, the employee, Andrews, gave her employer notice that she intended to quit, but said that she would wait until they hired her replacement. *Id.* at *1. A few weeks later, Andrews alleged that the district manager commented on her legs and a pin on her chest, and leered at her. *Id.* She complained to

investigated and gave Stach verbal and written warnings, appropriate responses to Nichols' complaints.

her employer, then quit later that same day. *Id.* The Court of Appeals affirmed the denial of benefits because the “decision to leave the office that day gave her employer no opportunity to further address her complaint.” *Id.* at *2. *See also Hanegraaf*, 2004 WL 835394, at *3 (affirming denial of benefits in part because the employee did not give the employer “a reasonable opportunity to correct the conditions”). (RA 38.)

Nichols quit her job at Reliant within thirty minutes of the offending incident. (RA 16.) The office manager was still meeting with other employees and attempting to set up an all employee meeting when Nichols packed her things and went home. (RA 16-17.) Nichols gave Reliant no time to respond to her complaint. Even so, Reliant was beginning to investigate the matter and was planning a company-wide meeting and an individual meeting with Stach. (DA 4; RA 16.) Despite Nichols’ hasty departure, Reliant was already responding to her complaint. It would be in direct contradiction to the statute and unfair to Reliant to reward Nichols for her hasty departure in the midst of Reliant’s appropriate response.

CONCLUSION

Nichols complained to Reliant about her coworker and then, within half an hour, quit her job, giving Reliant no reasonable opportunity to respond. Nevertheless, Reliant did respond appropriately: it began an investigation and was planning meetings to address the conflict between Nichols and Stach. Likewise, Reliant had responded to each of Nichols’ complaints regarding her conflicts with Stach. Relying on the testimony presented at the hearing, the unemployment law judge concluded that Nichols quit her job without any good reason caused by Reliant. Each of his findings is well-supported by the

record. Based on these findings, his legal conclusion is in accordance with the requirements of Minn. Stat. § 268.095. Nichols is disqualified from unemployment benefits under that statute, and this court should affirm the unemployment law judge's order.

Date: Jan. 19, 2006

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).