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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1130**

Linda J. Johnson,
Relator,

vs.

J C Penney Corporation Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 10, 2008
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 18012 05

Linda J. Johnson, 40816 Judson Bottom Road, North Mankato, MN 56003 (pro se relator)

J C Penney Company, Inc., Detroit Lakes Location #738, P.O. Box 650486, Dallas, TX 75265-0486 (respondent)

Lee B. Nelson, Katrina I. Gulstad, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101 (for Department of Employment and Economic Development)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Linda Johnson challenges the determination of the unemployment law judge (ULJ) that she was disqualified from receiving benefits under Minn. Stat. § 268.095, subd. 1(1) (Supp. 2005) because she quit her job without good reason caused by the employer. Because the record contains substantial evidence to support the ULJ's determination, we affirm.

FACTS

On October 25, 2005, relator quit her job with respondent JC Penney and applied for unemployment benefits, which were denied on the grounds that she was disqualified under Minn. Stat. § 268.095, subd. 1(1). On appeal to the ULJ, relator argued that she had good cause to quit because (1) she was forced to work under adverse working conditions and subjected to harassing and intimidating behavior from an outside contractor, and (2) respondent failed to award her a promised pay raise in August 2004. The ULJ found that relator quit her job without good cause because she was dissatisfied with the working conditions and the offensive behavior of a maintenance worker, conditions that were not severe enough for a reasonable person to quit.

On appeal, this court affirmed in part, concluding that the adverse working conditions did not establish a good cause to quit, but also remanded because the ULJ failed to analyze whether the breached promise to raise relator's pay established good cause to quit. *Johnson v. J.C. Penney Corp.*, No. A06-607, 2007 WL 330800, at *3 (Minn. App. Feb. 6, 2007). The court directed the ULJ to determine whether a unilateral

contract existed, whether the contract was breached, and whether the breach represented good cause for relator to quit 14 months after the breach occurred.

On remand, the ULJ conducted a second evidentiary hearing, at the conclusion of which he determined respondent created a unilateral contract when it promised to give relator a raise, and breached the contract when it subsequently changed its employee wage schedules and failed to give her the raise. However, the ULJ also determined that relator did not actually quit because of this breach, but quit because of dissatisfaction with other working conditions, and again found her disqualified for benefits. Relator challenges this ruling.

DECISION

This court may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner 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) (Supp. 2005). Findings of fact are viewed in the light most favorable to the ULJ's decision, and deference is given to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator challenges the ULJ's determination that she quit her job because of her dissatisfaction with other working conditions and not due to respondent's breach of its promise to give her a raise in 2004. Relator claims that both reasons contributed to her

decision to leave her employment because her eventual decision to quit was based on a “pattern of unresponsiveness, broken promises, and misleading, deceptive conduct by [her] employer.”

An applicant who quits employment shall be disqualified from unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2005). An exception to disqualification applies when “the applicant quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason for quitting 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.” Minn. Stat. § 268.095, subd. 3(a) (2004). “The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Whether an individual quit employment and the reason the individual quit are questions of fact for the ULJ to determine. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). The evidence must be viewed in the light most favorable to the determination, and the only question this court may consider is whether the record contains evidence that substantially supports that determination. *Nichols*, 720 N.W.2d at 594.

In this case, the record contains substantial evidence that supports the ULJ’s determination that relator quit because of adverse working conditions and not due to the

breached promise of a pay raise. The ULJ recited the following undisputed facts as dispositive. During the six months leading up to the time relator decided to leave her job, she never mentioned the issue of the broken promise of a raise. Rather, relator made many specific complaints pertaining to (1) safety, (2) inefficient merchandise delivery policies, (3) unfair or unequal application of employee parking policies, (4) substandard behavior or performance of her work associates, (5) an unfair performance review and (6) failure to restrain an outside contractor who made indecent remarks, although not directed at relator. On the day she quit, relator sent a detailed list of complaints to her supervisors but did not mention the raise issue. Again, when she filed for unemployment benefits on October 30, 2005, relator's statement as to "[w]hy did you quit?" did not mention the pay raise, but only listed the other adverse working conditions. In her appeal to the ULJ on December 19, 2005, relator stated for the first time that her job dissatisfaction included denial of a promised raise (August 2004) and an artificially low performance rating (July 2005).

The ULJ also noted 14 months passed from the time relator expected the promised raise and the time she quit employment. She initially complained in August 2004 about not being informed about the change in pay status in a timely fashion, but never again mentioned this issue to her employer. Notably, the ULJ did not find that relator waived good cause to quit, acknowledging *Baker v. Fanny Farmer Candy Shops No. 154*, 394 N.W.2d 564, 567 (Minn. App. 1986) (holding an employee who continued to work for nine months did not waive good cause to quit by continuing employment). Instead, the ULJ found the 14-month delay was evidence that the raise issue was not the actual reason

relator quit. During the evidentiary hearing on remand, relator admitted that she remained in her job after being denied the pay raise because she still considered the job as providing a decent wage and health benefits. Thus, although relator was dissatisfied that she was denied a raise, the ULJ found the pay raise issue was not the proximate cause for her ultimate decision to quit.

Although relator may have had “good cause” to quit as a result of the breached promise to provide a pay raise, she is disqualified from receiving reemployment insurance benefits if she actually quit for a different reason. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (concluding that where employee’s separation was “due to” job dissatisfaction, rather than chemical dependency, employee was disqualified from receiving benefits); *Foy v. J.E.K. Indus.*, 352 N.W.2d 123, 125 (Minn. App. 1984) (concluding that employee was disqualified from receiving benefits because employee quit as a result of job dissatisfaction rather than substantial reduction in wages), *review denied* (Minn. Nov. 8, 1984).

Because the record contains substantial evidence to sustain the ULJ’s determination that relator did not quit her job because the employer breached its employment agreement by failing to give her a promised raise, but that she quit for other reasons, we affirm.

We will not consider relator’s argument that the ULJ erred in refusing to accept additional evidence regarding the offensive behavior of an outside contractor because the issue is governed by the “law of the case” doctrine. *See, e.g., Sigurdson v. Isanti County*,

448 N.W.2d 62, 66 (Minn. 1989) (holding that issues considered and decided on a first appeal become the law of the case and will not be reexamined on a second appeal).

Affirmed.