STATE OF MINNESOTA
IN COURT OF APPEALS
A10-886

Nancy Gress-Swafford,
Relator,

vs.

Carlson Chiropractic Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 15, 2011
Affirmed
Shumaker, Judge

Department of Employment and Economic Development
File No. 23350748-4

Nancy Gress-Swafford, White Bear Lake, Minnesota (pro se relator)

Carlson Chiropractic Corporation, White Bear Lake, Minnesota (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit employment without good reason caused by the employer. She also argues that the ULJ erred by failing to order an additional evidentiary hearing; the ULJ's review of her request for reconsideration was insufficient; and the ULJ's decision on reconsideration was not timely. Because we conclude that, even if relator's contentions about her employment are true, the average, reasonable worker would not have been compelled to quit, and that relator's procedural claims have no merit, we affirm.

FACTS

Relator Nancy Gress-Swafford worked as an accounts receivable clerk for Carlson Chiropractic Clinic (CCC) from January 18, 2008, to August 28, 2009, when she quit. She challenges the ULJ's determination that she is ineligible for unemployment benefits, arguing that she quit for good reason, for which her employer was responsible, and that an average, reasonable worker would have been compelled to quit under the same circumstances. She describes numerous incidents which she believes created a hostile work environment and for which CCC was responsible.

According to relator, her relationships with her coworkers began to deteriorate when CCC president, Dr. Dustin Carlson, left relator's paycheck on her desk, without placing it in an envelope, while she was out of the office one day. She asserts that two of her coworkers, office manager Stephani Vail and chiropractic technician Dana Anderson,

saw her paycheck on the desk and they resented the fact that relator was being paid more than they were. Relator then asked Dr. Carlson to put her paycheck in an envelope in the future. He did so.

After the paycheck incident, relator claims that Vail and Anderson deliberately interfered with her employment duties. Specifically, she alleges that Vail withheld an administrative password from her, restricting her access to a portion of CCC's computer system. When relator complained to Dr. Carlson, he gave the password to her. Relator also claims Vail did not do enough to assist her when she was having problems with her computer. After complaining to Dr. Carlson, relator eventually was given a new computer. She further alleges that Vail held documents relator needed to do her job, giving them to her in bulk, instead of individually as they arrived in the mail. Relator also claims Vail hid from her a rubber stamp she had ordered for the office. And relator contends that Vail purposely entered names incorrectly into the company's billing system to interfere with her work.

Relator also alleges that Vail and Anderson harassed her. On one occasion, when relator asked Anderson a question, she claims Anderson responded by asking her, "[A]re you f--king stupid?" Relator told Dr. Carlson about the incident. Dr. Carlson met with Anderson and determined that she did not make the alleged comment. Additionally, relator contends Vail and Anderson made intimidating facial expressions and gestures to her on two occasions; and, when relator was out of her office one time, she found food crumbs and a coffee stain on her desk, which she suspected were left there by a coworker.

She complained to Dr. Carlson, who implemented a policy prohibiting employees from using each other's computers.

Relator complained to Dr. Carlson approximately once a month regarding Vail's and Anderson's behavior toward her. She claims Dr. Carlson did nothing to alleviate the hostile work environment. But the record shows that Dr. Carlson scheduled group meetings for relator, Vail, and Anderson to work out their issues, spoke with Vail and Anderson about each of relator's claims, implemented office policies to address issues relator had raised, and set up an internal e-mail system to create a smoothly operating work environment unhindered by unnecessary interruptions.

On August 18, 2009, relator notified Dr. Carlson she was quitting. Although Dr. Carlson stated that relator said her reason for quitting was because of a new office policy, he was aware it was also because of Vail and Anderson. The new office policy implemented a three-strike rule to encourage employees to get along, so that beginning in August 2009, after three written warnings, an employee would be fired. It also required employees to help with community events and marketing. Dr. Carlson stated that relator did not want to help with community events because "it wasn't her job." She denied quitting because of the new office policy, and in her letter of resignation she stated that she was quitting "due to a breach in our employment agreement." After relator notified CCC of her resignation, she came to work only twice before her last day on August 28, 2009, taking paid vacation the remainder of the time.

After leaving her employment with CCC, relator applied for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED), claiming she quit because of adverse treatment, for which her employer was responsible and which would compel an average, reasonable worker to quit. A DEED adjudicator determined relator was ineligible for unemployment benefits because she did not quit for good reason caused by her employer. Relator appealed the determination to a ULJ. After an evidentiary hearing that lasted two days, the ULJ found that relator did not quit for good reason caused by the employer. On February 16, 2010, relator requested the ULJ's reconsideration. The ULJ issued an order on April 23, 2010, affirming the initial decision on reconsideration, and relator brought this certiorari appeal.

D E C I S I O N

This court may affirm, remand, reverse, or modify the decision of a ULJ if the substantial rights of the relator may have been prejudiced because the findings, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). "An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010).

Relator challenges the decision of the ULJ that she was ineligible for unemployment benefits because she quit employment without good reason caused by the employer. Additionally, relator argues the ULJ erred by failing to order an additional

evidentiary hearing; the ULJ's review of her request for reconsideration was insufficient; and the ULJ's decision on reconsideration was not timely.

Quit for good reason caused by employer

An individual who quits employment is ineligible for unemployment benefits under Minn. Stat. § 268.095, subd. 1 (2010), unless one of ten enumerated exceptions is met. Relator claims eligibility under the exception for an individual who quits for a good reason caused by the employer. *See id.*, subd. 1(1). A good reason caused by the employer is defined as a reason that is directly related to the employment, 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. Minn. Stat. § 268.095, subd. 3(a)(1)-(3) (2010).

Relator contends that her coworkers intentionally interfered with her work and thus created a hostile work environment. During the evidentiary hearing, relator was unable to provide credible evidence to support her many allegations. The ULJ asked her multiple times to give specific facts and details about incidents she alleged had occurred, but, for the most part, she related only her suspicions and conclusions. The ULJ asked numerous questions of the parties, developing the facts of the case in more than 200 transcript pages of testimony. Despite this, most of the evidence set forth by relator was speculative and based on presumptions. Holding that "mere frustration or dissatisfaction with the work environment do not constitute good reasons caused by the employer for quitting," the ULJ explained that a good reason to quit is measured by the average, reasonable individual, "not the supersensitive." The ULJ determined relator's claim that

she quit for good reason caused by her employer was not supported by a preponderance of the evidence and that relator was ineligible for unemployment benefits.

"Whether an employee had good cause to quit is a question of law, which we review de novo." *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005). "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).

Our dispositive conclusion is that, even if all of relator's claims are true, the average, reasonable worker would not have been compelled to quit and thereby to become unemployed. The events that relator alleges constituted a hostile work environment are typical of the annoyances and friction every office worker might face. We agree with the ULJ that the average employee must have "some amount of tolerance" for such employment circumstances. *See Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 (1976) ("The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive."). For instance, even if it were true that Vail was not helpful when relator had computer troubles, or if she hid a rubber stamp from relator, or left crumbs on relator's desk, these are not the sorts of problems that would cause the average, reasonable worker to quit.

Further, relator's testimony raised many credibility issues that the ULJ resolved against her. For example, the ULJ found that, contrary to her testimony, relator

complained to Dr. Carlson about Vail and Anderson at least once a month. And, despite her contention that Dr. Carlson did nothing to resolve relator's concerns, the ULJ found, and the record supports, that Dr. Carlson addressed her complaints promptly, reasonably, and appropriately. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). However, we do not presently analyze the ULJ's credibility determinations because of our dispositive conclusion that relator's claims, even if true, would not compel the average, reasonable worker to quit and become unemployed.

Request for reconsideration and for an additional evidentiary hearing

Relator filed a timely request for reconsideration with DEED, asking the ULJ to hold a new evidentiary hearing so that she could subpoena additional witnesses and offer further materials. In her request, she argued that Vail, Anderson, and Dr. Carlson gave false testimony at the evidentiary hearing, and she claimed that, had they told the truth, the outcome of the hearing would have been different. She also alleged that Dr. Carlson "coach[ed]" Vail and Anderson before the hearing, which "taint[ed] the true facts." The ULJ affirmed on reconsideration and declined to order an additional evidentiary hearing.

The ULJ may not consider evidence that was not submitted at the evidentiary hearing, except when determining whether to order an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (2010). An additional evidentiary hearing is required only if the additional evidence would likely change the outcome of the case and if there was good cause for not previously submitting the evidence; or if it would show that evidence submitted at the evidentiary hearing was likely false and affected the outcome

of the decision. *Id*. "This court will defer to the ULJ's decision not to hold an additional hearing." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (referring to request for additional evidentiary hearing based on claims of new evidence).

Relator sought to subpoena additional evidentiary material and witnesses in her request for reconsideration. Specifically, relator requested that digital video recordings from security cameras mounted on buildings around Domino's Pizza be subpoenaed to "help [Dr.] Carlson recall the discussion during our walk to [Domino's]." Dr. Carlson testified he did not go on a walk with relator to discuss her allegations that Anderson used profanity in conversations with relator but stated he remembered having conversations with relator about the alleged incident. As for additional witnesses, relator did not show what the testimony of the subpoenaed witnesses would be, or that their testimony would support relator's version of events. The video recording would show nothing about the content of a conversation. However, even if this additional evidence were favorable to relator, it would not show that the average, reasonable worker would have been compelled to quit and become unemployed. The ULJ did not err in denying relator an additional evidentiary hearing and affirming on reconsideration.

Finally, relator's claims that the ULJ did not timely issue a decision on her request for reconsideration and that the ULJ's review of her request was insufficient are both without merit. Relator has cited no authority for either argument, and there is nothing to indicate that the ULJ did not fully consider relator's request before issuing an order. On

the contrary, the ULJ wrote a detailed memorandum explaining the reasons for affirming the original decision and for denying relator an additional evidentiary hearing.

Affirmed.