STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1668

Jahi Rashad,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

Filed May 9, 2011
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 25578213-3

Jahi Rashad, St. Paul, Minnesota (pro se relator)

Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (respondent)

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

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Huspeni, Judge.[*]

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

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

CONNOLLY, Judge

By certiorari appeal, relator challenges the determination of the unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he quit his employment. Because we conclude that the ULJ correctly determined that relator did not quit for a good reason caused by his employer and that the record substantially supports the ULJ's conclusion that relator was not enrolled full time in reemployment-assistance training, we affirm.

FACTS

Relator Jahi S. Rashad worked for respondent Minnesota Department of Employment and Economic Development from May 12 to June 22, 2010, as a full-time disability examiner processing Social Security disability claims. Relator's responsibilities included reviewing medical documentation. Relator's employment began with 12 weeks of training, including lectures, processing fictional claims, and processing actual claims with supervision. Relator does not have a medical background. His previous work experience involved accounting and financial positions. Although the disability-examiner position did not require a medical background, a medical background was preferred. Relator soon "found that processing the claims required much more technical medical knowledge than he expected" and that "much of the training [was] extremely technical and dense." Relator "told his supervisors that he found the training material to be overly technical and dense," but was encouraged to keep trying and was

told "that the job is not for everyone." While working for respondent, relator received training in bookkeeping and accounting through the state's dislocated worker program.

Relator also had concerns about the work environment. In a training session, relator was told that other employees had gotten in trouble for sending negative e-mails about their coworkers. Additionally, an instructor stopped relator in the hall during a break, told him she was happy to have him in the class, and then told him that department employees "can be 'nasty.'" Relator found the comments disturbing. The following day, the same instructor announced to the class that this was her last day, she was transferring to another position, relator and his classmates "should 'run like hell,'" and "the job was a dead end." Management subsequently learned about the incident and told the class that they should not judge the department by the instructor's comments and actions. Relator submitted his resignation on June 22, stating it would become effective July 6. However, relator did not work beyond June 22 because his supervisor told him that, due to the fact that he was in training, he did not need to work the two-week notice period.

Relator was determined to be ineligible for unemployment benefits as he quit his employment and his separation did not fall into one of the applicable exceptions. Relator appealed, and an evidentiary hearing was held before a ULJ. At the time of the evidentiary hearing, relator was on a waiting list for grant approval to take an economics course at the University of Minnesota. Respondent did not appear at the hearing. The ULJ concluded that relator (1) did not have a good reason to quit caused by his employer; (2) did not quit the alleged unsuitable employment within 30 calendar days of starting the position; and (3) did not quit to enter reemployment-assistance training. Relator

requested reconsideration and the ULJ affirmed his prior decision. This certiorari appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm, remand for further proceedings, or reverse or modify the decision if the relator's substantial rights may have been prejudiced because the ULJ's findings, inferences, conclusions, or decision violate constitutional provisions, exceed the department's statutory authority or jurisdiction, result from unlawful procedure, involve errors of law, lack substantial evidentiary support, or are arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb them when they are substantially sustained by the evidence. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

It is undisputed that relator quit his position with respondent. Generally, a person who quits his employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). Several exceptions, however, exist to this rule, including a quit for good reason caused by the employer and leaving unsuitable employment in order to enter reemployment-assistance training. *Id.*, subd. 1(1), (4). Proper disqualification from the receipt of unemployment benefits is a question of law, which we review de novo. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). Relator asserts that "[a] reasonable worker with my prior experience would have resigned the Disability Examiner position based on the adverse

working conditions and the presence of the reemployment assistance program to assist in seeking suitable employment." We consider each of these arguments in turn.

A. Good reason caused by the employer

In order to constitute a good reason caused by the employer, the employee's reason for quitting must (1) be "directly related to the employment and for which the employer is responsible"; (2) be "adverse to the worker"; and (3) "compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a) (2010). "The test for whether there was good cause attributable to the employer for the termination is whether the reason for quitting is compelling, real and not imaginary, substantial and not trifling, reasonable and not whimsical and capricious." *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 897 (Minn. App. 1993) (citing *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976)). "A complaining employee ordinarily must give the employer an opportunity to take the appropriate steps before quitting the employment." *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 388 (Minn. App. 2005); *see* Minn. Stat. § 268.095, subd. 3(c) (2010) (stating applicant subject to adverse work conditions "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"). "But, if upon reporting, an employee is given no assurance that the problem will be corrected, the employee has a good reason to quit." *Cook*, 695 N.W.2d at 388.

On appeal, relator's argument that he was subject to adverse work conditions appears to be solely based on his belief that he was not qualified for the disability-examiner position:

> The requirements of the disability examiner role were in greater excess of my credentials. For this reason, I was compelled to enter the reemployment assistance training. [Respondent] failed to inform me of the rigorous and highly technical nature of the Disability Examiner position. The unexplained technical nature of the position was a breach of the terms of the employment agreement. The position required making error free analysis and final decisions on cases that effect the public's well[-]being and economic security. In this role, evaluating the severity of mental impairments, from symptoms, signs, and laboratory findings for meeting the medically determinable impairment standard established by the central government, was well beyond my knowledge base and credentials. Furthermore, rating the degree of functional limitation resulting from medically determinable impairments was acknowledged as befitting someone with a stronger background in the medical sciences than I possess.

Relator's adverse-working-environment claim thus appears to us to be a question of whether the employment was suitable for relator, rather than whether relator was subject to adverse working conditions, complained to his employer, and received no expectation of assistance. *See* Minn. Stat. § 268.035, subd. 23a(a) (2010) (defining suitable employment as "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications"); *see also* Minn. Stat. § 268.095, subd. 1(3) (providing exception to general ineligibility requirement when employee quits within 30

calendar days because the employment was unsuitable),[1] (4) (providing exception to general ineligibility requirement when employee quits unsuitable employment to enter reemployment-assistance training). Similarly, an employee's frustration or dissatisfaction with working conditions does not amount to a good reason caused by the employer to quit. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). The ULJ did conclude that respondent "could have done more to explain the technical, medical nature of the disability examiner position" and that this failure was adverse to relator, but not so much as to compel the average reasonable worker to quit. We agree. *See Erb v. Comm'r of Econ. Sec.*, 601 N.W.2d 716, 719 (Minn. App. 1999) ("Absent extenuating circumstances, because appellant voluntarily terminated her own employment she is disqualified from reemployment benefits.").

Moreover, the record reflects that when relator went to his supervisors with his concerns over the technical nature of the position, he was encouraged to keep trying and to continue participating in the training. Relator himself testified at the evidentiary hearing that respondent encouraged questions and for "an hour or two each morning . . . we'd talk about different cases, our complaints, or our struggles and things of that nature." Relator testified that respondent "allowed [the trainees] to raise many questions" and that he in fact did so. This is not a situation in which unreasonable demands were made of relator or that relator was given no assurance of assistance from his employer. *Cf. Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978)

[1] The ULJ concluded that "[e]ven if the employment was unsuitable, the evidence shows that [relator] worked longer than 30-calendar days." This conclusion is not challenged on appeal.

(when both the number of work sites and the employee's hours more than doubled during a two-year period, "facts compell[ed] the conclusion that the employer made unreasonable demands of employee that no one person could be excepted to meet"); *Porrazzo v. Nabisco, Inc.*, 360 N.W.2d 662, 663-64 (Minn. App. 1985) (employee had good cause to quit when his work hours were substantially increased, he was assigned responsibility for an additional full shift each day, and employer gave no assurance or expectation of assistance when employee sought help regarding an unworkable relationship with his supervisor). Therefore, we conclude that the ULJ correctly determined that relator did not quit for a good reason caused by his employer.

B. Quit to enter reemployment-assistance training

Relator challenges the ULJ's conclusion that he did not fall within the reemployment-assistance-training exception, contending that he was participating in the WorkForce Center program to the extent possible and that he began the program within 30 days of quitting. An applicant is eligible for unemployment benefits when (1) "the employment was unsuitable" and (2) "the applicant quit to enter reemployment assistance training." Minn. Stat. § 268.095, subd. 1(4). Respondent is correct that the ULJ did not consider whether the disability-examiner position was suitable for relator, but only focused on whether relator met other requirements for enrollment in reemployment-assistance training.

"Full-time training provided through the dislocated worker program, the Trade Act of 1974, as amended, or the North American Free Trade Agreement is considered 'reemployment assistance training,' if that training course is in accordance with the

requirements of that program." Minn. Stat. § 268.035, subd. 21c(b) (2010). "An applicant is considered in reemployment assistance training only if the training course has actually started or is scheduled to start within 30 calendar days." *Id.*, subd. 21c(d) (2010). Under the regulations promulgated pursuant to the Trade Act of 1974, whether training is classified as full time is determined according to the schedule of the training provider. 20 C.F.R. § 617.22(f)(4) (2010) ("The hours in a day and days in a week of attendance in training shall be full-time in accordance with established hours and days of training of the training provider."). There is no evidence in the record to show what full-time training entails.

But even assuming relator was enrolled full time, the training course has to actually start or be scheduled to start within 30 calendar days. Minn. Stat. § 268.035, subd. 21c(d). Determining that relator quit his employment on June 22, the ULJ concluded that relator "neither began the training nor was scheduled to begin the training within 30-calendar days of leaving the employment [with respondent]." When denying relator's request for reconsideration, the ULJ added that the documentation submitted by relator "show[ed] that he participated in short-term, vocational courses," but "neither show[s] that the training was considered full time by the training provider nor show[s] that [relator] was either actively participating in, or scheduled to begin, training within 30-calendar days of leaving the employment [with respondent]."

In challenging the ULJ's conclusion that he was not participating in or scheduled to begin training within 30 days of his separation, relator argues that the ULJ failed to acknowledge that his last day of employment was July 6. Prior to the evidentiary

hearing, relator completed an employment questionnaire stating that his last day of employment was *June 21*, the day he gave notice to his employer, and while he told his employer that his last day would be July 6, he did not work past June 21 because he "was told that [he] could take earned sick days off." At the evidentiary hearing, relator submitted a copy of his *June 22* resignation letter, and testified that his last day of work was June 22. Relator also testified:

> So that's why I ended up leaving that day because they gave me the option. I was told by [my supervisor] that I could take sick days, because I had sick time that I had accumulated in the time I was there and I just used those, so that's why I didn't stay until July 6.

The record substantially supports the ULJ's determination that relator's last day of employment was June 22.

Relator next argues that he was participating in reemployment-assistance training as evidenced by the certification-exam voucher he received from the WorkForce Center and the fact that he was placed on a waiting list for funding to take a course at the University of Minnesota. The documentation submitted by relator shows that he received the voucher on July 15, within 30 days of his separation, but we agree with the ULJ that this documentation appears preliminary and does not provide substantial evidence showing that relator actually started training within 30 days after quitting his employment, only that he had approval to take the test. On the one hand, the inherent

nature of a voucher suggests that it is to be used to offset future expenses[2]—here an exam that has yet to be taken—and the documentation indicates that relator still had to schedule the exam. Conversely, the approval of relator's certification-exam request also suggests that relator has taken the necessary courses in preparation for the exam. Thus, the evidence in the record does not substantially support a conclusion one way or the other as to whether relator had begun reemployment-assistance training within the requisite period. We note that "[a] hearing to determine qualification for unemployment benefits is an evidence-gathering inquiry. The ULJ has the duty to ensure that all relevant facts are clearly and fully developed. . . . [and] should assist unrepresented parties in the presentation of evidence." *Vasseei v. Scmitty & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010) (quotation and citations omitted).

In any event, the ULJ concluded that "the available evidence shows that, since leaving [his employment with respondent], [relator's] training through the WorkForce Center has been limited to seeking approval to enroll in an economics course and receiving permission to take a certification test." This conclusion is substantially supported by the record. Relator has not shown how his activities at the WorkForce Center constituted full-time reemployment-assistance training; he merely asserts that they were and contends that any other involvement was limited by the program's budget. Because relator does not qualify for one of the statutory exceptions to general ineligibility

[2] *See Black's Law Dictionary* 1714 (9th ed. 2009) (defining "voucher" as "[a] written or printed authorization to disburse money"); *The American Heritage College Dictionary* 1514 (3d ed. 1997) (defining "voucher" as "[a] written authorization or certificate, esp. one exchangeable for cash or representing a credit against future expenditures").

for unemployment benefits following a quit, the ULJ did not err in concluding that relator was not eligible for unemployment benefits.

Affirmed.