STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2283

Lynn Berry,
Relator,

vs.

Leech Lake Tribal Council Gaming Division,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 29, 2011
Affirmed
Halbrooks, Judge

Department of Employment and Economic Development
File No. 25884793

Lynn Berry, Grand Rapids, Minnesota (pro se relator)

Leech Lake Tribal Council Gaming Division, Cass Lake, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

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

HALBROOKS, Judge

Relator brings this pro se certiorari appeal to challenge the determination by an unemployment-law judge (ULJ) that she is ineligible to receive unemployment benefits because she quit her employment without a good reason caused by her employer. We affirm.

FACTS

Relator Lynn Berry worked for respondent Leech Lake Tribal Council Gaming Division from July 21, 1999, to August 2, 2010. At the end of her employment, Berry was a full-time supervisor who performed hard and soft counts,[1] and administrative work at the White Oaks Casino in Deer River. In Berry's opinion, there was an increasing lack of teamwork and cooperation during hard- and soft-count operations at the casino. She became increasingly frustrated by coworkers who would be late or absent without notice, were uncooperative with other workers, and would "backtalk" and whisper to others about Berry behind her back.

Berry became more stressed by her work situation and began experiencing digestive problems, difficulty sleeping, difficulty breathing, and "nerves." She went to see a doctor and therapist for these issues. Berry was never given any specific diagnosis for her problems but was prescribed medication for her nerves and allergy medicine for her breathing issues. Berry complained to casino management about the lack of ventilation, but she did not mention any of her other health problems for fear they would

[1] "Hard count" and "soft count" are terms used to describe counting currency.

not remain confidential. The casino attempted to fix the ventilation problem, but Berry stated that "it really didn't seem like there was much difference."

In mid-July 2010, Berry approached Steve Cash, the general manager of the casino, and complained to him about the lack of cooperation and respect from her subordinates. Berry said that she would need time off or would have to quit. Berry was granted 11 days off. Upon her return, Berry reprimanded an employee for arriving late. That employee in turn filed a complaint about Berry. Berry again stressed her dissatisfaction with the work and her subordinates to Cash, but she did not tell him that she was on the verge of quitting.

On Monday, July 26, 2010, Berry was scheduled to work for a coworker, but the coworker ended up being able to work the shift. Berry did not show up or call in because she believed that because the coworker was there to work her scheduled shift, the required number of people would be working. But because another member of the team called in sick, the team was shorthanded, and Berry was considered a "no call, no show" that day. When Berry found this out, she became frustrated and did not return to work. Berry was terminated on August 2, 2010, for missing three consecutive work days.

Berry applied for unemployment benefits, stating health as her primary reason for quitting. But she was determined to be ineligible because she quit employment for personal reasons. Berry appealed. The ULJ found that Berry's medical conditions did not make it medically necessary for her to quit and that she did not have a good reason to quit caused by her employer. The ULJ concluded, therefore, that Berry is ineligible for unemployment benefits.

Berry requested reconsideration and reiterated the health issues and the insubordination that led to her decision to quit. Berry also raised the issue of discrimination for the first time. She claimed that her employer was trying to get rid of "non-natives" in order to meet a particular "native/non-native" ratio. She also claimed that "natives" received benefits and "job perks" that "non-natives" did not. The ULJ affirmed. This appeal follows.

D E C I S I O N

I.

Subject to certain exceptions, an applicant who quits employment is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). One exception applies when an applicant quit employment for a good reason caused by the employer. *Id*., subd. 1(1).

> (a) A good reason caused by the employer for quitting is a reason:
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> (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.
>
> (b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

Id., subd. 3 (2010). Another exception to the general rule of ineligibility is if an employee quit because of a serious illness or injury that made it medically necessary to quit. *Id.*, subd. 1(7).

If the employee quits due to a good reason caused by the employer, the employee "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions" before the reason can be considered a good one. *Id.*, subd. 3(c). Similarly, if an employee quits due to medical reasons, the employee must inform "the employer of the medical problem and request[] accommodation and no reasonable accommodation is made available." *Id.*, subd. 1(7).

To determine if either of these exceptions applies, we must first determine why Berry quit her employment. The reason why an individual quit employment is a fact question for determination by the ULJ. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as factual findings). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

The ULJ found that "the final incident that caused [Berry] to quit occurred when she was told a switched shift would be treated as a no-call no show." The ULJ also found that "Berry's medical conditions did not make it medically necessary to quit." The ULJ's findings are supported by substantial evidence in the record. The statutory exception that allows an employee who quits for medical reasons to collect unemployment benefits therefore does not apply.

But we must also examine whether Berry's reason for quitting constitutes a good reason caused by her employer. Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). "In order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976) (quotation omitted). A good reason caused by the employer to quit exists when working conditions combine to create "unreasonable demands of [the] employee that no one person could be expected to meet." *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978).

As an initial matter, we note that Berry did not give her employer a reasonable opportunity to correct the adverse conditions. Berry concedes that the one time she told her employer that she was considering quitting, she was given her requested relief—time off. Berry became frustrated when she was (what she considered unfairly) listed as a "no call, no show." But rather than ask her employer to address the situation, she simply stopped showing up for work. She admits that she never contacted human resources or the employee-assistance program that was available to her. She therefore cannot qualify for this statutorily created exception.

In addition, Berry was frustrated with the attitude and work ethic of her subordinates and the way that they treated her. Generally, a poor relationship with

another employee does not constitute a good reason to quit. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (noting that good cause "does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions"). While Berry's stated reasons for quitting may have been good personal reasons, they do not rise to the level of what our legislature has defined as a good reason caused by her employer.

II.

Berry argues on appeal that the hearing was unfair and that the transcript contains mistakes and omissions. In a fair hearing, the ULJ fully develops the record, assists unrepresented parties in presenting a case, and explains the procedure and the terms used throughout the hearing. Minn. Stat. § 268.105, subd. 1(b) (2010); Minn. R. 3310.2921 (2009). A hearing is generally considered fair if both parties are afforded the opportunity to give statements, cross-examine witnesses, and offer and object to exhibits. *Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007).

Berry argues that the transcript contains "too many unfinished sentences which made no sense at all." Berry gives four examples of instances in which she believes her testimony was mis-transcribed. She claims that (1) a sentence describing how the currency is removed from the machines is not accurate; (2) she never said the term "FDS" in the context of describing soft-count procedures; (3) she never referred to another employee as "Travis"; and (4) she remembers making an apology about her voice that does not appear in the transcript. Although it is surely frustrating to feel misquoted,

the examples provided by Berry do not affect the substantive portions of her testimony. Any errors in the transcript, therefore, did not affect her substantial rights. *See* Minn. Stat. § 268.105, subd. 7(d) (2010) (stating that this court may only reverse if an error affected the relator's substantial rights).

Berry also claims that she did not receive termination papers from her employer. But the pertinent issue with respect to Berry's assertion that the hearing before the ULJ was unfair is whether Berry was provided, prior to the hearing, with the exhibits the employer intended to offer. When the ULJ mentioned that the termination letter was one of the exhibits, Berry indicated that she never received it from Cash, but she did not state that it had not been provided to her as an exhibit to the hearing. Because it appears that Berry received all of the exhibits prior to the hearing and because she was afforded an adequate opportunity to ask questions and provide testimony, we conclude that there were no procedural deficiencies that require remand. Because Berry quit her employment and because her reason for quitting does not fit within any of the statutorily created exceptions entitling her to unemployment compensation, we affirm.

Affirmed.