**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1846**

Gwen Peltier,
Relator,

vs.

Regions Hospital,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 10, 2013**
**Affirmed**
**Bjorkman, Judge**

Department of Employment and Economic Development
File No. 29680465-3

Gwen Peltier, Stillwater, Minnesota (pro se relator)

Regions Hospital, St. Paul, Minnesota (respondent)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Kirk, Judge.

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

**BJORKMAN**, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that she is ineligible for benefits, arguing that (1) the ULJ erred by concluding that she quit without good cause attributable to her employer, (2) the record is incomplete, and (3) the proceedings before the ULJ were unfair in several respects. We affirm.

## FACTS

Relator Gwen Peltier was employed by respondent Regions Hospital as a surgical-care assistant. In March 2011, Peltier experienced a mental-health crisis while at work and agreed to be admitted to the hospital's behavioral-health unit. She was released several days later but suffered a hamstring injury that prevented her from working for several months. Before she could return to work, the hospital required Peltier to undergo a return-to-work evaluation. Licensed psychologist John Hung, Ph.D., conducted the evaluation. Dr. Hung concluded that Peltier was fit to work, provided she undergo psychiatric evaluation every six months and attend monthly counseling sessions to verify her ongoing fitness for work; the hospital required Peltier to comply as part of a return-to-work plan. Peltier felt the evaluation and the counseling requirements were unnecessary, but she agreed to the plan and returned to work in late August.

In December, nurse manager Mary Wagner met with Peltier to address staff complaints about Peltier's behavior. Peltier subsequently e-mailed Wagner's supervisor, expressing concern about Wagner's behavior during the meeting and indicating she had recorded the conversation. Based on Peltier's e-mail and another nurse's report that

Peltier said she was recording other conversations at work, the hospital believed patient privacy may be compromised. Wagner and human-resources representative Martha Boemker met with Peltier to discuss these concerns. Peltier denied recording the conversation with Wagner but made other statements that caused Wagner and Boemker concern about Peltier's mental health and fitness for work. The hospital placed Peltier on leave and required her to undergo another return-to-work evaluation with Dr. Hung. Peltier did not believe the evaluation was necessary and contacted her union representative to ask about filing a grievance. The union representative encouraged Peltier to cooperate with the evaluation, so she did. Dr. Hung once again declared Peltier provisionally fit to work. Peltier disagreed with some of Dr. Hung's recommendations but ultimately signed a return-to-work plan that slightly modified the original plan. She returned to work in January 2012.

On April 10, a charge nurse criticized Peltier for stopping to drink a glass of water rather than immediately complying with a fellow surgical-care assistant's request for help cleaning rooms. Peltier felt the charge nurse was disrespectful and declared that she quit.

Peltier applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Peltier is ineligible to receive benefits because she quit without good cause attributable to her employer. Peltier appealed. During a two-day evidentiary hearing, the ULJ received 30 exhibits and heard testimony from Peltier, Wagner, Boemker, and Margaret Nielsen, the hospital's lead nurse for employee health and wellness. The ULJ concluded that Peltier did not quit for a good reason attributable to the hospital and therefore is not entitled to unemployment

benefits. Peltier requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

## D E C I S I O N

We review a ULJ's order to determine whether it is "(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) (2012).

### I. Substantial evidence supports the ULJ's determination that Peltier quit without good cause attributable to her employer.

An applicant who quits employment is not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception is when an applicant quits for "a good reason caused by the employer." *Id.*, subd. 1(1). To qualify for this exception, the reason must (1) be directly related to the employment and for which the employer is responsible; (2) be adverse to the applicant; and (3) compel an average, reasonable employee to quit and become unemployed. *Id.*, subd. 3(a) (2012).

The determination that an employee quit without good reason attributable to the employer is a legal conclusion, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). But that 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). We review those findings in the light most

favorable to the ULJ's decision and will not disturb them if they are substantially supported by the evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to the ULJ's determinations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp't Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

It is undisputed that Peltier quit because she felt harassed by the return-to-work evaluations and plans that the hospital required.[1] The ULJ determined that Peltier's dissatisfaction with these requirements was not good cause to quit because the plans addressed legitimate concerns about her mental health. Peltier challenges several of the ULJ's underlying factual findings.

First, Peltier argues that the record does not support the ULJ's finding that her March 2011 hospitalization was mental-health related and that the ULJ should have simply found that she "was voluntarily hospitalized for a personal crisis." We disagree. All three of the hospital's witnesses expressed concern about Peltier's mental health, it is undisputed that Peltier was admitted to the behavioral-health unit, and Peltier's discharge papers recommend psychiatric treatment. This evidence amply supports the finding that Peltier was hospitalized for mental-health issues.

Second, Peltier contends that the ULJ erred by finding the return-to-work plans reasonable because they imposed requirements that were "never proven necessary by a psychiatrist or a medical doctor." We are not persuaded. Dr. Hung opined that "it is

[1] Peltier claims that the April 10 incident in which the charge nurse criticized her was the "last straw" that led her to quit. But it is undisputed that she did not quit based on that single incident, and she agrees that such an incident would not cause the average worker to quit.

important to monitor [Peltier's] psychological status (which impacts her work ability) for the foreseeable future as a way to ensure that she remains capable of reliably performing her job duties safely and effectively." While Peltier challenges Dr. Hung's credentials, she identifies no reason why the hospital's reliance on the opinion of a licensed psychologist is unreasonable. And Boemker testified that return-to-work evaluations and plans are "standard practice" to "establish expectations" when an employee returns to work after a medical leave.

Third, Peltier challenges the ULJ's finding that Wagner received complaints about Peltier's behavior in December 2012, emphasizing that Wagner did not supply any documentation to substantiate her testimony. But the lack of corroborating documentation does not preclude the ULJ from crediting Wagner's testimony. Wagner testified about the staff complaints, and Peltier cross-examined Boemker about the lack of documentation. Moreover, the staff complaints were only part of the reason why the hospital required the second return-to-work evaluation and plan. The record also reflects that the hospital wanted to better tailor Peltier's return-to-work plan to address her fitness for work.

In sum, the record contains substantial evidence supporting the ULJ's determination that the return-to-work evaluations and plans did not harass Peltier but addressed legitimate concerns that her mental health impaired her fitness for work. Because the requirements the hospital placed on Peltier were reasonably tailored to her situation, her dissatisfaction with those requirements does not constitute an adverse employment condition that would cause the average employee to quit. *See Ryks v.*

*Nieuwsma Livestock Equip.*, 410 N.W.2d 380, 382 (Minn. App. 1987) (stating that good cause to quit does not include "mere dissatisfaction with working conditions"). Accordingly, we conclude that Peltier did not quit for good cause attributable to the hospital.[2]

## II. The record does not contain material errors or omissions.

Peltier argues that she is entitled to reversal of the ULJ's ineligibility determination because the transcript of the hearing is incomplete and confusing. First, Peltier argues that the transcript omits "key portions" of her testimony. We disagree. Our careful review of the transcript reveals that a few words may have been lost due to the ULJ and Peltier speaking over each other, but the transcript nonetheless demonstrates that the ULJ understood and noted Peltier's testimony and arguments. Second, Peltier contends that the transcript is confusing because it does not employ a consistent method of identifying who is speaking. But while the transcript sometimes identifies speakers by their names and sometimes by only a "Q" and "A," it uses the more limited identification only in circumstances when an ongoing exchange between two speakers (typically the ULJ and one witness) make use of longer identifiers unnecessary. We discern no error in the transcription of the evidentiary hearing.

Peltier also argues that exhibit 25, a letter from one of her health-care providers to Nielsen, is supposed to have two pages but is "missing the second letter." But Peltier

[2] Because substantial evidence indicates that Peltier was not subjected to adverse employment conditions that would cause the average, reasonable worker to quit, we need not address the further requirement that an employee complain of adverse conditions to establish good cause for quitting. *See* Minn. Stat. § 268.095, subd. 3(c) (2012).

offered the exhibit as it is and after discussion plainly indicating that it comprised only one page. We conclude that the ULJ did not err by admitting the exhibit.

## III. The ULJ conducted a fair hearing and considered Peltier's request for reconsideration in accordance with applicable law.

Peltier argues that the ULJ erred by (1) admitting hearsay and testimony about documents that were not submitted as evidence, (2) limiting her testimony, and (3) ruling on her request for reconsideration rather than recusing in favor of another ULJ. We address each argument in turn.

First, applicable rules permit a ULJ to "receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2011). Under this rule, the fact that testimony is based on hearsay or concerns documents not presented as evidence does not mandate its exclusion but is a factor for the ULJ to weigh in judging the credibility of the witnesses. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007) (discussing factors for ULJ to weigh in assessing credibility). Peltier has not demonstrated that the ULJ erred by admitting uncorroborated and hearsay testimony.

Second, Peltier argues that the ULJ "cut her off" several times and did not permit her to "say everything she needed to say." We disagree. Peltier does not identify any testimony she was precluded from offering, and our review of the transcript reveals that the ULJ carefully developed the record over the course of the two-day hearing to permit all parties an opportunity to give statements, cross-examine witnesses, and offer and

object to evidence (including 30 exhibits, mostly from Peltier) while avoiding duplication as much as possible to resolve the matter expeditiously. *See* Minn. Stat. § 268.105, subd. 1(b) (2012) (requiring ULJ to "ensure that all relevant facts are clearly and fully developed"); Minn. R. 3310.2921 (2011) (establishing procedures for conduct of hearing, including permitting ULJ to "limit repetitious testimony and arguments").

Finally, Peltier contends that it was unfair to have the ULJ decide her request for reconsideration. But Minnesota law requires that reconsideration requests be decided by the ULJ who issued the decision unless the ULJ is unavailable, has disqualified himself, or has been removed by the chief ULJ. Minn. Stat. § 268.105, subd. 2(e) (2012). Peltier does not claim that any of these exceptions applies. Accordingly, the ULJ did not err by deciding Peltier's request for reconsideration.

**Affirmed.**