STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2083

Patricia Strom,
Relator,

vs.

Fond Du Lac Management, Inc., Black Bear Casino & Hotel,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 17, 2013
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 30057485-3

Patricia Strom, Eveleth, Minnesota (pro se relator)

Fond Du Lac Management, Inc., Black Bear Casino & Hotel, Cloquet, Minnesota (respondent employer)

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

Considered and decided by Cleary, Presiding Judge; Johnson, Chief Judge; and Hooten, Judge.

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

HOOTEN, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that she is ineligible for unemployment benefits because she quit her employment without good reason caused by her employer. Because substantial evidence sustains the ULJ's findings, we affirm.

FACTS

Relator Patricia Strom was employed at respondent Fond Du Lac Management, Inc., d/b/a Black Bear Casino and Hotel in Cloquet, Minnesota, as a sous chef in the casino buffet kitchen. Relator's responsibilities were to "ensur[e] the cleanliness of all kitchen areas," "supervise the kitchen staff," and "keep[] open lines of communications with other staff regarding the food quality." As part of this job, relator cooked approximately 20 different items, put the food on pans and warmers, and watched the other cooks and "lines out front" to ensure the food was "safe for the guests to eat." Relator's staff typically included two "runners" who put out the food, the prime rib carver, the "salad person," and the "prep person in the back"—for a total of six persons working at the buffet.

The casino buffet served 500–1,500 people each night between 5:30 and 9:00 p.m. Relator opined that "there should be at least nine to ten people" and that the buffet was "understaffed" when she was working with only four to six people. The buffet was comprised of different stations, for example, dessert, cold food, and a meat-carving station, and relator believed there needed to be "at least one person at every station."

Sometimes the buffet was staffed with "up to nine, ten people in the back or in the kitchen putting out the meals for the . . . evening." But, on occasion, banquets serving up to 650 people would occur simultaneously in the convention center, which would occupy the same ovens and require some of the buffet staff. In addition, relator testified that problems arose because staff who called in sick would not be replaced and the buffet would operate shorthanded.

According to relator, her work load changed during the periods when she believed the buffet was understaffed. For example, the "runners" would have to cook and relator testified that it was hard for her to ensure the food they prepared was cooked correctly or at safe temperatures. Relator stated she could not watch the lines out front, but would have to cover other stations during breaks and for missing staff. These periods were a "mess" and "uncontrollable" because the staff was so busy, and "people were crashing into each other" and "burning themselves." Additionally, the wait staff was "constantly breaking dishes," resulting in broken glass near the dessert station. Relator further testified that, because of this pace, staff would work in "a sloppy[,] unsafe" manner, including not washing fruits and vegetables. Relator stated that customers would scream and yell because "nothing [was] getting done" as a result of understaffing. Relator believes that this combination caused a stressful and unsafe work environment.

Relator complained "many times" to her superiors, including the food and beverage director, that the buffet was inadequately staffed, but relator did not specifically state how many employees were needed to adequately staff the buffet. Relator testified that she was told by management that a request had been made to hire additional staff,

but no additional staff was hired. As a result, relator quit her job without notice to her employer or supervisors because she "just couldn't do it anymore." Relator stated in her application for unemployment benefits that the continued understaffing of the buffet created unsafe working conditions.

Relator applied for unemployment benefits, and the Minnesota Department of Employment and Economic Development (DEED) determined she was ineligible because she quit without a good reason caused by her employer. Relator appealed, and a telephonic hearing was held, during which the ULJ took relator's testimony. No one from Fond Du Lac participated. Following the hearing, the ULJ concluded that relator quit her employment without a good reason caused by her employer. Relator requested reconsideration and the ULJ affirmed the decision. Relator now appeals.

D E C I S I O N

When reviewing a ULJ's decision, this court may affirm the decision, remand 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 . . . made upon unlawful procedure, . . . affected by other error of law," or are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2012).

In this case, there is no dispute that relator voluntarily quit. An applicant who quits employment is ineligible for unemployment benefits unless a statutory exception to ineligibility applies. Minn. Stat. § 268.095, subd. 1 (2012). An employee who quits employment may be eligible for unemployment benefits if "the applicant quit the

employment because of a good reason caused by the employer." *Id.*, subd. 1(1) (2012). A good reason caused by the employer is one for which the employer is responsible, that is directly related to the employment, that is adverse to the employee, and that "would compel an average, reasonable worker to quit." *Id.*, subd. 3(a)(1)–(3) (2012). Moreover, the employee "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions" before the conditions can be considered a good reason caused by the employer. *Id.*, subd. 3(c) (2012).

The reason an employee quit employment is a fact question for the ULJ to determine. *Embaby v. Dep't of Jobs & Training*, 397 N.W.2d 609, 611 (Minn. App. 1986). But whether that reason is a good reason to quit caused by the employer is a question of law reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). This court will not disturb factual findings when they are supported by substantial evidence in the record. *Id.*; *see* Minn. Stat. § 268.105, subd. 7(d). "When witness credibility and conflicting evidence are at issue, we defer to the decision-maker's ability to weigh the evidence and make those determinations." *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

In this case, relator argues that she quit because her workplace was "so understaffed" that she encountered "very exorbitant adverse working conditions." Specifically, relator states that the understaffing resulted in "high stress levels, high

tempers," "unsafe cooking," "people running and crashing into each other, burning foods, [and] unsanitary food lines . . . in the kitchen." DEED argues that relator voluntarily quit without good reason caused by her employer because her self-created stress and frustration with buffet staffing does not meet a statutory exception for ineligibility under Minn. Stat. § 268.095, subds. 1(1), 3.

The supreme court has determined that good cause may be found when "the employer made unreasonable demands of [an] 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) (concluding that substantially increasing an employee's duties and doubling work hours constituted good cause to quit). For example, a substantial increase in an employee's job responsibilities and a confrontational relationship with an immediate supervisor resulting in the employee having headaches, difficulty in breathing, irritability, stress reaction, and an irregular heartbeat constitute good cause to quit. *Porrazzo v. Nabisco, Inc.*, 360 N.W.2d 662, 663–64 (Minn. App. 1985). However, 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." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). Good cause to quit has been described as being "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). "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." *Id.* (quotation omitted).

Deferring to the ULJ's factual findings, while there is evidence that relator's job was difficult, her working conditions were not so adverse as to compel the average reasonable employee to quit. Relator testified that the buffet was understaffed, creating difficulty monitoring food preparation and service to ensure the food was "safe for guests to eat," and an unsafe working environment because the kitchen staff would crash into each other, burn themselves, and break dishes. Relator testified that this environment caused her stress.

However, the record does not indicate that, aside from perceived stress, relator herself suffered detriment from these concerns, or that this environment would have caused an average, reasonable worker to quit. *See* Minn. Stat. § 268. 095, subd. 3(a)(1)–(2). There is no evidence that relator was ever reprimanded for inadequate work. Relator did not offer any specific examples of injuries or harm from these concerns, and acknowledged that there would not "have been any negative effects on [her] if [she] kept working." Finally, there is no evidence that the understaffing substantially increased relator's hours or workload beyond a reasonable level. Further, there is no specific evidence of the frequency with which these issues arose and the record is devoid of any evidence indicating that these conditions are anomalous in the food service industry. In fact, the ULJ determined that "[t]he working condition that [relator] experienced was inherent in her occupation as a sous chef and working in a restaurant."

Because we defer to the ULJ's findings of fact, and because substantial evidence supports the conclusion that relator's working conditions would have compelled an average, reasonable worker to quit, the ULJ did not err in determining that relator quit without a good reason caused by her employer.

Affirmed.