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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1452**

Kathy Clark,
Relator,

vs.

House of Charity, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 27, 2014
Affirmed
Halbooks, Judge**

Department of Employment and Economic Development
File No. 31133675-3

Kathy Clark, Minneapolis, Minnesota (pro se relator)

House of Charity, Inc., c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Schellhas, Presiding Judge; Halbooks, Judge; and
Harten, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she quit employment without a good reason caused by the employer. We affirm.

FACTS

Relator Kathy Clark worked full-time as a residential manager for respondent House of Charity beginning in January 2011. In March 2013, Clark's employer received a writ of execution and instructions to garnish 25% of Clark's wages for five consecutive pay periods beginning in April. The employer verified the validity of the writ by contacting the district court that issued the writ and then notified Clark of its intent to proceed with the garnishment. On April 11, Clark asked her employer to delay garnishing her wages because she was fighting the underlying judgment. Her employer declined.

On April 18, Clark resigned by submitting a letter, stating that she "[found] it impossible to continue to work for a facility that will not support me." Clark applied for unemployment benefits and was determined to be ineligible because she had quit employment for "a personal reason not related to the employment." Clark challenged that departmental decision. Following a hearing, the ULJ determined that Clark is ineligible for benefits because she had quit employment and no exception applied. The ULJ affirmed the decision on reconsideration. This certiorari appeal follows.

DECISION

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced because the decision 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.

The purpose of the Minnesota Unemployment Insurance Law is to assist those who are unemployed through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2012). The law is remedial in nature and must be applied in favor of awarding benefits, and any provision precluding receipt of benefits must be narrowly construed. Minn. Stat. § 268.031, subd. 2 (2012).

An individual who quits employment is disqualified from receiving unemployment benefits unless one of ten statutory exceptions applies. Minn. Stat. § 268.095, subd. 1 (2012). The only potentially relevant exception here is when the applicant quit for "a good reason caused by the employer." *Id.*, subd. 1(1). A good reason caused by the employer is one "(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." *Id.*, subd. 3(a) (2012). Whether an employee quit for a

good reason caused by the employer is a question of law, which we review de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003).

The ULJ determined that Clark quit because her employer informed her that it would garnish her wages as required by the writ. Substantial evidence supports this finding, and Clark does not challenge it. The ULJ also determined that Clark's employer was not responsible for the garnishment and that the garnishment would not compel the average, reasonable worker to quit and become unemployed. The ULJ therefore determined that Clark did not quit for a good reason caused by her employer.

Clark challenges the determination that she did not quit for a good reason caused by her employer, citing, in part, case law addressing reductions in wages. But the case law Clark relies on is not on point. This is not a situation in which Clark's employer elected to reduce her wages. *See id.* at 419. Minnesota law provides that service of a garnishment summons upon the garnishee (here, the employer) "shall obligate the garnishee to retain possession and control of the disposable earnings . . . of the debtor" and that the garnishee shall "remit and deliver the garnished nonexempt disposable earnings . . . to the creditor upon levy . . . court order, or operation of law." Minn. Stat. §§ 571.73, subd. 1, .78(3)(a) (2012). The employer was obligated to garnish Clark's wages. It was therefore not responsible for the reduction in her take-home pay. And Clark's frustration with the garnishment proceeding is not, under the statute, a reason that would "compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a)(3).

Clark did not have a good reason to quit caused by her employer. Because no other statutory exception applies, the ULJ correctly determined that Clark is ineligible for unemployment benefits.

II.

We next address Clark's argument that she did not receive a fair hearing. A ULJ is to conduct a hearing as an "evidence gathering inquiry." Minn. Stat. § 268.105, subd. 1(b) (2012). A ULJ "should assist unrepresented parties in the presentation of evidence." Minn. R. 3310.2921 (2013). Clark argues that the ULJ failed to fully develop the record. Our review of the record shows that the ULJ questioned each witness about the factual underpinnings of the case and also permitted the parties to question each witness. The ULJ attempted to assist Clark with framing some of her inquiries and instructed witnesses to answer some of Clark's questions despite their apparently tangential relevance. Before closing the hearing, the ULJ confirmed with the parties that they had nothing more to offer. Clark's argument that the ULJ failed to develop the record fully is unfounded.

Clark also argues that the ULJ erred by not requiring the employer to disclose its witnesses and the substance of their testimony before the hearing and by not requiring disclosure of exhibits ahead of time. Upon demand, a party has three days to "disclose . . . the names of all witnesses the party intends to call at the hearing and identify any written documents that the party intends to introduce." Minn. R. 3310.2914, subp. 2 (2013). But Clark did not make a discovery demand. In the absence of a discovery demand, advance disclosures were not required.

Clark also argues that the ULJ erroneously permitted the introduction of hearsay evidence. But a ULJ “may 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 (2013); *see also Vang v. A-1 Maint. Serv.*, 376 N.W.2d 479, 482 (Minn. App. 1985) (stating that hearsay may be sufficient to support ULJ’s decision).

Clark contends that the employer erroneously failed to call as a witness an employee who could provide highly relevant testimony. The employer called two witnesses, each of whom had firsthand knowledge about the underlying facts. Although the ULJ informed Clark that she had the right to reschedule the hearing to subpoena witnesses, Clark did not do so. The ULJ expressly found that the employer’s witnesses’ testimony was more credible than Clark’s and that the employer described a more plausible chain of events. Although Clark disagrees with this finding, she does not explain the basis for her disagreement.

Clark also argues that the ULJ erred by allowing the employer to read into evidence the writ of execution rather than offering it as an exhibit. But Clark does not dispute the existence or content of the writ, and a party is not required to offer exhibits. *See* Minn. R. 3310.2921. A ULJ is not bound by statutory and common-law rules of evidence, so long as the ULJ only uses “reliable, probative, and substantial evidence as a basis for decision.” Minn. R. 3310.2922.

Clark also asserts that the ULJ erroneously permitted one of the employer's witnesses to testify without first requiring him to take an oath or affirmation. "Before testifying, every witness is required to declare to testify truthfully, by oath or affirmation." Minn. R. 3310.2920 (2013). The record indicates that, due to a flight delay, the employer's human resources witness was not present when the other witnesses took an oath. Later in the hearing, the ULJ questioned this witness without first placing him under oath.

Clark did not raise this concern with the ULJ at the hearing or in her request for reconsideration. Our review is limited to those issues actually considered by the ULJ. See Minn. Stat. § 268.105, subd. 7 (2012) (stating that this court reviews "the unemployment law judge's decision"); *Big Lake Ass'n v. St. Louis Cnty. Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (stating that an argument is waived in an administrative appeal when not sufficiently raised in administrative proceeding); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate review is limited to issues raised and addressed below).

Even if we were to consider the merits of Clark's concern, we note that the substance of the human resources witness's testimony was that he had verified the validity of the writ by contacting the district court, and that in his opinion, the employer was obligated to comply with the writ. Another witness also testified that the employer had verified the writ. Although the ULJ erred by questioning the witness without requiring an oath or affirmation, this error did not affect Clark's substantial rights.

The transcript reveals that the ULJ conducted an even-handed, fair hearing and that the ULJ's findings are based on reliable, probative, and substantial evidence. Clark's procedural arguments are without merit.

Affirmed.