STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1316

Hamida Jama,
Respondent,

vs.

Wise Home Health Care, Inc.,
Relator,

Department of Employment and Economic Development,
Respondent.

Filed April 17, 2017
Reversed
Connolly, Judge

Department of Employment and Economic Development
File No. 34616185-3

Hamida Jama, Minneapolis, Minnesota (pro se respondent)

Mark R. Anfinson, Minneapolis, Minnesota (for relator)

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

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes, Judge.

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

CONNOLLY, Judge

In this unemployment-compensation appeal, relator, a company that employs individuals to provide personal-care-attendant (PCA) services to third parties, challenges a decision by an unemployment-law judge (ULJ) on reconsideration that respondent-employee is eligible for unemployment benefits because she was discharged by relator for reasons other than employment misconduct. Relator asserts that (1) respondent quit her employment when she stopped providing PCA services after her only client, her uncle, left the country; and (2) relator is a staffing service and thus respondent is presumed to have quit under Minn. Stat. § 268.095, subd. 2(d) (2014), because she did not request a new work assignment within five days after completion of a suitable assignment. Because we conclude that respondent quit her employment without a good reason attributable to the employer, we reverse.

FACTS

Respondent Hamida Jama began working for relator Wise Home Health Care, Inc. in January 2014 as a PCA. Relator testified that it is a "home healthcare business. A staffing service employer." When respondent began working, she was required to fill out two forms, an "Employee Availability Declaration" and a "Staffing Service Agreement." The Employee Availability Declaration gave her two options, (1) to apply to care exclusively for one client or (2) to care for any clients assigned by relator. Respondent selected the first option.

The Staffing Service Agreement stated verbatim the language of Minn. Stat. § 268.035, subd. 21d (2014) (defining a staffing service) and Minn. Stat. § 268.095, subd. 2(d) (the definition of quit for a staffing service and the potential effects on unemployment benefits) and confirmed that appellant fully understood the meaning of both statutes. The form also stated:

> *I understand and agree that the above statutes require that when my current work assignment caring for a client ends for any reason, if I fail to request a new, suitable work assignment caring for another client or if I refuse a new suitable work assignment caring for another client that I have voluntarily quit my employment which may affect unemployment benefits.* I understand and agree to make any request for another suitable assignment in writing to my employer. This separate document is in clear and concise language and I fully understand the meaning of this document.

(Emphasis added.)

Respondent worked for relator until her uncle moved out of the country on February 18, 2016. On March 2, 2016, she informed relator that her uncle had moved out of the country and, when relator asked if she wished to care for another client, she said no. On March 4, 2016, respondent signed an "Employee Resignation Form" which stated "I, Hamida Jama voluntarily resign my employment as a PCA effective my last day of work which was 02-18-16 and will not accept further employment . . . ."

On April 29, 2016 the Minnesota Department of Employment and Economic Development (DEED) determined that respondent was eligible for unemployment benefits. Relator appealed that decision to a ULJ arguing that respondent was not discharged but instead voluntarily quit. On May 18, 2016, an evidentiary hearing was conducted over the

phone. Respondent did not participate. An unemployment insurance specialist employed by relator and relator's program president participated on behalf of relator. The ULJ determined that respondent was discharged for reasons other than employment misconduct and is eligible for unemployment benefits. The ULJ concluded that Minn. Stat. § 268.095, subd. 2(d) applied to the case because relator was a staffing service but, because relator did not provide respondent with clear-and-concise notice about the requirements of § 268.095, subd. 2(d), the section did not apply. As a result, the ULJ determined that respondent was discharged and was therefore entitled to unemployment benefits.

Relator made a request for reconsideration and the ULJ determined that the findings of fact issued in the first order were not correct and should be modified, but concluded that the ultimate decision was legally correct. The ULJ determined that relator is a home-healthcare business, not a staffing service, and thus Minn. Stat. § 268.095 subd. 2(d) did not apply. The ULJ concluded that, under Minn. Stat. § 268.095 subd. 2 and subd. 5, respondent did not quit her employment but was discharged and thus was eligible for unemployment benefits.

D E C I S I O N

"We may reverse or modify a ULJ's decision if the relator's rights were prejudiced because the ULJ's findings, inferences, conclusion, or decision were, among other grounds, affected by an error of law," unsupported by substantial evidence in view of the entire record as submitted, or in excess of the ULJ's statutory authority. Minn. Stat. § 268.105 subd. 7(d) (2016); *Vasseei v. Schmitty & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 749 (Minn. App. 2010). "The determination that an employee quit without good reason attributable to

the employer is a legal conclusion, but the 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). An employee's reason for quitting is a question of fact subject to this court's deference. *See, e.g.*, *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing a determination for the reason the employee quit as a factual question). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb the findings "when the evidence substantially sustains them." *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to the ULJ's credibility determinations. *Id.*

An applicant for unemployment benefits who quits her job is ineligible for benefits unless the quit falls within one of the statutory exceptions. Minn. Stat. § 268.095, subd. 1. "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a). Minnesota law also provides that "[a] discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5(a).

We conclude that respondent voluntarily quit her employment without a good reason attributable to the employer. When she first applied to be a PCA, respondent had a choice to work for one client exclusively or to care "for any client(s) assigned to [her] by [relator]." She chose to work for her uncle exclusively and agreed that "should [my] exclusive client no longer qualify for home care services or for any reason whatsoever I cannot care for [him] exclusively . . . I voluntarily resign rather than accept continued work

caring for another client." When her uncle left the country and respondent informed relator of the change, she was offered other work, which she declined. Thus, at the time the employment ended, respondent had the opportunity to continue her employment by taking on another client and she declined. By definition, this is a quit. *Id.*, subd. 1.

Respondent relies heavily on the unpublished case, *Heinonen v. Student Experience LLC*, No. A06-2023, 2007 WL 2993831 (Minn. App. Oct. 16, 2017), to argue that the communication, at the beginning of the employment, that the employment will end on certain conditions may constitute a discharge when those conditions are met. In *Heinonen*, the relator was employed by the respondent for three years as a personal-care attendant for her granddaughter who was developmentally challenged. *Id.* at *1. At the beginning of the employment, the respondent employed only students as personal-care attendants but made an exception for Heinonen, a nonstudent. *Id.* The respondent informed Heinonen that she could work for no other clients. *Id.* When the child's medical-assistance funding was cut, the student was no longer a client and Heinonen, based on the representations made to her by the respondent, concluded that she was no longer qualified for employment and did not ask if she could have another client. *Id.* The respondent testified at an evidentiary hearing that it had other clients it would have assigned, as it had changed its nonstudent policy, and Heinonen testified that she would have accepted another assignment. *Id.* This court concluded that "a reasonable employee in Heinonen's position would have believed that she was no longer allowed to work for [the respondent] based on its unequivocal and unretracted statements to her." *Id*. at *3. The court further concluded that requiring an employee to ask if the employer has changed its mind after the employer

communicates that the employee is no longer allowed to work adds a requirement not contemplated by Minn. Stat. § 268.095, subd. 2(a). *Id.*

Besides having no precedential value,[1] *Heinonen* is distinguishable. In this case, respondent elected to serve one client, her uncle. She knew, from the beginning of the employment, that there was an option available to be assigned more clients. Heinonen thought that she was not eligible to work for other clients under the company's nonstudent policy. *Heinonen*, 2007 WL 2993831 at *1. Further, when respondent communicated that her uncle had left the country, relator offered her the chance to work for a new client; respondent chose not to work. The end of the employment relationship was not the effect of a policy change or a decision that relator did not want to employ respondent. Relator gave respondent a chance to stay, and she declined.

We conclude that, in view of the entire record as submitted, the ULJ's decision finding that respondent was discharged and did not quit is unsupported by substantial evidence in the record. Because we conclude that respondent quit and was not discharged, we need not address the question of whether relator is a staffing service. Based on these conclusions, we reverse the decision.

Reversed.

[1] Unpublished opinions of the court of appeals are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2016).