STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0056

Matthew Frie,
Relator,

vs.

Kroll Ontrack, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 20, 2018
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 35844205-3

Matthew Frie, Monticello, Minnesota (pro se relator)

Kroll Ontrack, LLC, Eden Prairie, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, 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 decision of an unemployment law judge (ULJ) that he is

ineligible for unemployment benefits because he quit his employment and does not meet a statutory exception to ineligibility for an employee who quits employment. Relator argues that he quit because of a medical necessity and for a good reason caused by his employer. We affirm.

FACTS

Relator Matthew Frie is an attorney who began working full-time at respondent-employer Kroll Ontrack, LLC, as a document review attorney on November 30, 2015. The Kroll facility was open from 7:00 a.m. until 7:00 p.m., and employees were allowed to keep flexible hours so long as they worked 40 hours a week. Frie suffers from anxiety, and the flexible work hours and lower stress environment Kroll offered were the main reasons that he accepted the position.

At the beginning of 2017, Kroll announced that it had merged with another business, and Frie felt that the company culture had changed as a result. He testified that professional standards were not being enforced, and that "[t]here's been lots of people taking a lot of time off and people being rewarded for tardy and insufficient work." Frie was worried about the future of the company, and, in June of 2017, he met with his direct supervisor to discuss his concerns. Frie testified that his direct supervisor took his criticisms "personally and began a campaign" to criticize his work and make an issue of Frie's "taking advantage of the flexible hours."

On Monday July 17, 2017, at 2:02 p.m., Frie's direct supervisor sent him the following email:

> Hi Matthew,

> We have not seen you at the office yet today, and I wanted to check in to make sure everything is okay. I am not able to find an email from you that you were planning to be out today, though let me know if I am just missing it.
>
> Thanks,
> [Direct Supervisor]

Frie responded that he was

> Taking advantage of extended hours. Spent most of the morning discussing future career plans with other interested parties. Putting in 6 hours today (2-8). Still planning to put in 40 this week. In Fargo right now. Let me know if you would like to discuss further, in private.
>
> Sincerely,
>
> Matthew D. Frie

His direct supervisor replied, saying "[t]hanks for the heads up. That's what I figured. I'm glad the extended hours give you the time to do that. Thanks! [Direct supervisor]."

Then on Monday July 31, 2017, at 12:04 p.m., Frie's direct supervisor emailed him another question about his hours. It reads, "Hi Matthew, We haven't seen you yet today, and I can't find a record that you expected to be out today. Please let us know if you are okay and whether you expect to be in today. Thanks, [Direct supervisor]." After both emails, Frie had a personal meeting with his direct supervisor and was told that his supervisor "wanted to know where [Frie] was if [he] didn't arrive by a particular time on a particular day." Being questioned about his schedule caused Frie to experience worsened anxiety. Frie gave two weeks' notice of his intent to quit on July 31, with an intended last day of August 11.

On August 3, at a meeting with Frie and other employees, Frie's direct supervisor announced that Kroll would be discontinuing its bonus pay and holiday pay. Following the announcement, the supervisor directed Frie into the hallway with him and told Frie that he was terminated for smirking during the announcement and for his reduced productivity. The supervisor advised Frie that had he not quit, he would have been fired anyway.

After holding a hearing, the ULJ issued a decision determining that Frie quit his employment effective August 11, making him ineligible for unemployment benefits, and that no exception to ineligibility applied. Because Frie was discharged for reasons other than employment misconduct prior to his intended quit date, the ULJ determined that "[i]f all other eligibility requirements are met, Frie is eligible for unemployment benefits. . . . for the period from July 30, 2017, to August 11, 2017." But the ULJ held that he was not eligible for unemployment benefits after August 11, 2017.

At the hearing before the ULJ, Frie argued that two exceptions to ineligibility for quitting employment apply to his case: that a serious medical condition made it medically necessary to quit and that he quit because of a good reason caused by his employer. The ULJ determined that the exception for a serious medical condition did not apply to Frie because he did not request an accommodation. And the ULJ rejected Frie's argument that he quit for a good reason caused by his employer because the reasons Frie gave for quitting "would not compel the average, reasonable worker to quit the employment and become unemployed rather than remaining in the employment."

Frie requested reconsideration by the ULJ, and claimed that he "recently discovered that I forwarded to myself e-mails dated January 23, 2017 and February 14, 2017 where I

informed another manager . . . that I was taking advantage of the company's advertised flexible hours to deal with a medical condition." But Frie did not submit these emails to the ULJ, and the ULJ affirmed its prior determination.

D E C I S I O N

An individual who quits employment is ineligible for unemployment benefits unless that individual meets one of nine exceptions under the statute. Minn. Stat. § 268.095, subd. 1 (Supp. 2017). When reviewing a ULJ's eligibility determination, we may affirm or remand for further proceedings, or reverse or modify if the petitioner's substantial rights might have been prejudiced because the findings, inferences, conclusion, or decision was: "(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) (Supp. 2017).

"Whether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law, which this court reviews de novo." *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003). 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." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). If the evidence substantially sustains the ULJ's findings, we will not disturb them. Minn. Stat. § 268.105, subd. 7(d); *Peterson*, 753 N.W.2d at 774.

One of the exceptions to ineligibility for employment benefits based on quitting is if the employee quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, 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.* at subd. 3(a) (Supp. 2017).

Frie argues that he quit because his direct supervisor "created a work environment that was so hostile that a reasonable person with [his] medical condition would quit." But Frie misinterprets the standard. The standard of reasonableness is "applied to the average man or woman, and not to the supersensitive. Thus, like the standard of the 'reasonable person' in negligence and anti-discrimination laws, the standard here is an objective one." *Werner v. Med. Professionals LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quotation and citation omitted), *review denied* (Minn. Aug. 10, 2010). Frie was not denied the ability to work flexible hours, nor does the evidence support that his direct supervisor created a hostile work environment that would cause a reasonable person to quit employment. Rather, Frie's supervisor requested that Frie inform him of the hours that he intended to work. Frie's reason for quitting would not "compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *See* Minn. Stat. § 268.095, subd. 3(a).

Another exception is that the employee quit because his "illness or injury made it medically necessary." Minn. Stat. § 268.095, subd. 1(7). But "[t]his exception only applies

if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*

The ULJ found, and the evidence supports, that Frie did not request an accommodation from his employer, and thus this exception does not apply to Frie. On appeal, Frie argues that the ULJ should have granted him a new hearing because in his request for reconsideration he informed the ULJ that he had two emails from January and February of 2017 where he informed another manager at Kroll that he was taking advantage of Kroll's flexible hours to deal with a medical condition.

On a motion for reconsideration, the ULJ can only consider evidence that was not submitted at the hearing for the purpose of deciding whether to order a new hearing. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2017). The ULJ must order a new hearing if "evidence which was not submitted at the hearing: (1) would likely change the outcome . . . and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence . . . at the hearing was likely false and . . . had an effect on the outcome of the decision." *Id.* But Frie did not submit the emails to the ULJ for reconsideration, and without the emails, it would be speculative for the ULJ or this court to decide that the emails would likely have changed the outcome of the hearing or would have shown that evidence submitted at the hearing was likely false and affected the outcome. *See id.* Moreover, Frie does not explain why he had good cause for not submitting the emails at the hearing. According to Frie, he had forwarded the emails to himself, which means they were in his possession at the time of the hearing. Frie's failure to discover evidence in his own possession is not "good cause" under the statute, and the ULJ did not err by denying

his request for a new hearing. *Id.* ("'Good cause' for purposes of this paragraph is a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.").

Affirmed.