STATE OF MINNESOTA
IN COURT OF APPEALS
A11-20

Tara Kaul,
Relator,

vs.

Crutchfield Dermatology, P.A.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 3, 2011
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 25823791-3

Suzanne W. Kvas, Lehmann & Lutter, P.A., Eagan, Minnesota (for relator)

Darrin M. Rosha, The Rosha Legal Group, PLLC, Mound, Minnesota (for respondent employer)

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

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

PETERSON, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she quit her employment. We affirm.

FACTS

Relator Tara Kaul began working for respondent Crutchfield Dermatology, P.A., as a full-time medical esthetician in October 2008. In the fall of 2009, relator learned that she was pregnant, and in January 2010, she began discussions with Crutchfield's human-resources manager, Laura Dornik, about her wish to work less than full time after her baby was born. Dornik told relator that she could not "anticipate what the schedule will be or what the staffing needs will be at that time, but it looks like it might be something that we can make work."

On March 10, 2010, Crutchfield held a staff meeting to present to all of its employees an "Employment, Confidentiality, and Non-competition Agreement." The terms of the agreement prohibited employees from working in their profession in a ten-county area for 18 months[1] after leaving Crutchfield and required employees to tell prospective employers that they had entered into the noncompete agreement. Employees who signed the agreement would receive $500 in cash and $200 in goods and services, and employees who signed immediately would receive an extra $100 in cash. Employees were told that the noncompete agreement was considered a condition of employment and

[1] The 18-month period was later reduced to 12 months.

that if they did not sign the agreement by July 1, 2010, their employment would be terminated.[2] At a staff meeting on April 21, employees were told that changing employment status from full time to part time or from part time to full time was considered to be obtaining a new position and an employee would be required to sign the noncompete agreement to obtain the new position.

Relator began a 12-week leave of absence on April 28, and her expected date of return to work was July 22. In a series of emails, relator and Dornik continued to discuss possible schedules for relator's return to work on a part-time basis following the leave. In a July 2 email to relator, Dornik stated:

> Your schedule will be Monday from 7:55 to Close (roughly 7:30) and Fridays 7:55 to Close (roughly 5:00 or 5:30), with your first day being Monday, July 26, 2010.
>
> In order to change employment status from full-time to part-time, you will be required to sign the Employment, Confidentiality, and Non-Competition Agreement upon your return to work.

Relator testified that she did not respond to the statement about the noncompete in the July 2 email because she did not agree with the noncompete and her

> history with Dr. Crutchfield is that things are negotiable and you know I was aware that there were other employees that were employed at that time and did not sign the agreement. So my thought process is well given that I was an employee with good standing that maybe Dr. Crutchfield would negotiate some of the terms with me.

[2] Due to a leave of absence, the date for relator to sign the agreement was extended.

When relator returned to work on July 26, she refused to sign the noncompete. Crutchfield's attorney spoke with relator and told her that she had three options: (1) sign the agreement and begin the part-time position; (2) return to the full-time position that she held before the leave, with additional time (until September 27) to consider the agreement; or (3) sign a release stating that she was not going to sign the agreement, and Crutchfield would not contest her claim for unemployment benefits. By the time Dornik was leaving for the day, relator had not chosen any of these options, so Dornik told her that, without signing the agreement, relator would be ineligible for the part-time position, would be resuming her full-time position, and would be expected to be at work the following day.

Over the next three days, relator did not come to work or call in. Relator corresponded with Crutchfield in response to voicemail and indicated that she would not be coming in because she would not work full-time. On July 28, Dornik sent relator a letter stating that under Crutchfield's employee handbook, any employee who fails to call in or show up for work two times in any 12-month period will be considered to have abandoned her position and, therefore, voluntarily resigned after the second occurrence. The letter stated further that because relator was absent on July 27 and 28, and did not properly notify the clinic about these absences, she voluntarily resigned her position, effective July 28. On Friday July 30, relator reported to work and was asked to leave the premises.

Respondent Minnesota Department of Employment and Economic Development determined that relator was ineligible for unemployment benefits because she quit her

employment. Relator appealed, and, following an evidentiary hearing, a ULJ determined that relator is ineligible to receive unemployment benefits because she could have continued working until September 27 without signing the noncompete agreement but, instead, quit because Crutchfield refused to provide her with a part-time work schedule. Relator filed a request for reconsideration, and the ULJ affirmed the initial decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court

> may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
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> (1) in violation of constitutional provisions;
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> (2) in excess of the statutory authority or jurisdiction of the department;
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> (3) made upon unlawful procedure;
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> (4) affected by other error of law;
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> (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) (2008).

A person who voluntarily quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2008 & Supp. 2009). A determination that an employee voluntarily quit is a finding of fact, which we will not disturb if it is substantially supported by the evidence. *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Whether an employee voluntarily quit depends on whether the employee "exercises a free-will choice to leave the employment." *Shanahan v. Dist.*

Mem'l Hosp., 495 N.W.2d 894, 896 (Minn. App. 1993). If, when the employment ended, "the decision to end the employment was . . . the employee's," the employee is considered to have quit. Minn. Stat. § 268.095, subd. 2(a) (2008 & Supp. 2009). In contrast, an employee is discharged from employment 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 (2008).

The reason why an individual quit employment is a fact question for the ULJ to determine. *See Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985) (reviewing determination of reason employee quit as a fact question). "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. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

I.

Relator disputes the ULJ's finding that she quit her employment and argues that she was fired from her part-time position because she refused to sign the noncompete agreement. But substantial evidence supports the finding that relator could have continued working until September 27 without signing the noncompete agreement but quit because Crutchfield refused to provide her with a part-time work schedule. Relator's

argument that she was fired is based on the premise that the parties had reached an agreement that she would work part time as early as February or early March. The record shows, however, that although Crutchfield expressed a willingness to allow relator to begin a part-time position following her leave of absence, no agreement was reached in February or March. In a May 5 email to relator, Dornik stated:

> As far as your return to work, it still looks as if Mondays and Fridays are the days that we will need you, however business could change in the upcoming months and I would like you to contact me one month before your scheduled return to work date to finalize what we anticipate our needs to be at that time. At this time I can't give you a definitive schedule for your return.

Crutchfield did not commit to a part-time position for relator until July 2, when Dornik told relator in an email what her schedule would be. And in that email, Dornik explicitly told relator that in order to change from full time to part time, she needed to sign the noncompete agreement. When relator later refused to sign the noncompete agreement, she was not hired for the part-time position that she wanted. But she was not terminated from the full-time position that she held when she began her leave of absence. She was allowed to continue in her full-time position and given until September 27 to make a decision about the noncompete agreement.

Relator also argues that because she was willing to work a shift on July 30, she did not exercise a free-will choice to end the employment. But this argument ignores the fact that, under Crutchfield's employment handbook, she had already abandoned her position as of July 28 by failing to work or call in for two shifts.

Relator argues that failing to show up for work does not mean that she is ineligible to receive unemployment benefits because she was given less than 12 hours to find daycare for her infant daughter. An employee who quit employment is not ineligible for unemployment benefits if "the [employee's] loss of child care for the [employee's] minor child caused the [employee] to quit the employment, provided the [employee] made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation is available." Minn. Stat. § 268.095, subd. 1(8) (2008). Relator does not cite, and we have not found, any evidence in the record that indicates that relator made reasonable effort to obtain other child care or requested time off or any other accommodation from the employer. Therefore, even if a loss of child care had caused relator to quit, this statutory exception from ineligibility does not apply to relator.

II.

Relator argues that, if she quit, it was for a good reason caused by the employer. An employee who quits employment because of a good reason caused by the employer is not ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (2008).

> (a) A good reason caused by the employer for quitting is a reason:
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> (1) that is directly related to the employment and for which the employer is responsible;
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> (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.

Minn. Stat. § 268.095, subd. 3 (2008).

Relator contends that the issue is whether Crutchfield's demand that she sign the noncompete agreement would compel an average, reasonable worker to quit and become unemployed, rather than remaining in the employment. But this argument ignores the ULJ's factual determination that relator quit because Crutchfield refused to provide her with a part-time schedule and the ULJ's finding that relator could have continued working until September 27 without signing the noncompete agreement. The ULJ acknowledged that the requirement that relator sign the agreement "may well have been good reason to quit." But that requirement had no effect until two months after relator's employment ended and did not cause relator to quit when she did. Furthermore, an average, reasonable worker would not quit two months before a deadline for deciding whether to sign the noncompete agreement.

Affirmed.