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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-960**

Doreen Newkirk,  
Relator,

vs.

Gerard Treatment Programs, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 2, 2012  
Affirmed; motion denied  
Collins, Judge\***

Department of Employment and Economic Development  
File No. 26985921-3

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Gerard Treatment Programs, LLC, Chicago, Illinois (respondent employer)

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Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Collins,  
Judge.

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

## UNPUBLISHED OPINION

**COLLINS**, Judge

In this certiorari appeal, relator argues that the unemployment-law judge (ULJ) erred in determining that she quit her employment without a good reason caused by the employer and is ineligible for unemployment benefits. On appeal, relator argues that she quit due to medical necessity. We affirm.

### FACTS

Doreen Newkirk worked part-time for Gerard Treatment Programs, LLC as a counselor for troubled preteen and teenage girls. Newkirk's duties occasionally required her to physically intervene in altercations between patients or physically restrain patients to prevent them from harming themselves. In the fall of 2010, Gerard decided to convert its five part-time positions to full-time positions beginning January 1, 2011, because of an increase in patient population and difficulty finding reliable part-time staff. Newkirk's supervisor discussed this change with Newkirk and indicated that continued employment might be available to her in either a full-time or an on-call position. These positions involved the same duties and paid the same hourly rate as Newkirk's part-time position. The full-time position provided 40 hours per week, insurance benefits and paid time off, while the on-call position provided no benefits and a varied schedule limited to less than 30 hours per week. Newkirk did not want the full-time position because she would exceed financial-eligibility criteria for Minnesota Care health insurance that she relied on to manage various health issues. She applied for the on-call position but was not selected by Gerard because the spontaneity of the position and the unpredictability of the physical

demands that might be encountered reduced Gerard's ability to accommodate Newkirk's physical limitations through scheduling. Newkirk's employment ended on December 31, 2010.

The Minnesota Department of Employment and Economic Development (DEED) initially determined Newkirk to be eligible for unemployment benefits. Gerard appealed this determination, and a contested telephonic hearing was conducted in which Newkirk and representatives of Gerard participated. The ULJ held that Newkirk quit her employment without a good reason caused by the employer and is therefore ineligible for unemployment benefits. Newkirk requested reconsideration, and the ULJ affirmed. Newkirk brought a certiorari appeal and filed a motion to supplement the record with evidence that she suffered work-related injuries, which she alleges physically restricted her from accepting a full-time position. A special term panel of this court deferred a ruling on the motion pending consideration of the merits.

## **D E C I S I O N**

Newkirk challenges the ULJ's decision that she quit without a good reason caused by Gerard and does not qualify for any statutory exceptions to ineligibility for unemployment benefits. This court may modify, reverse, or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the findings or decision were "made upon unlawful procedure," affected by an error of law, or "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d)(3)-(5) (2010). A determination that an employee voluntarily quit is a question of fact. *Nichols v. Reliant Eng'g & Mfg. Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). The reason that an employee quit

employment is also a fact question for the ULJ to decide, whereas whether an employee's reason for quitting constitutes a good reason caused by the employer is a legal question reviewed de novo by this court. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000); *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986). "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). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or more than a scintilla of evidence." *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted).

An employee who voluntarily quits employment is ineligible for unemployment benefits unless "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2010). A good reason caused by the employer is one that directly relates to employment, that the employer is responsible for, that is adverse to the employee, and "that would compel an average, reasonable worker to quit." *Id.*, subd. 3(a) (2010). Moreover, the employee must "give the employer a reasonable opportunity to correct the adverse working conditions" before a good reason caused by the employer exists. *Id.*, subd. 3(c) (2010). "[T]o constitute good cause, the circumstances which compel the decision to leave employment must be 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).

An employee who voluntarily quits employment may also be eligible for unemployment benefits if “the applicant quit the employment (i) because the applicant’s serious illness or injury made it medically necessary that the applicant quit.” Minn. Stat. § 268.095, subd. 1(7) (2010). However, “[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.*

Newkirk contends that she is eligible for unemployment benefits because her physical limitations gave her “good cause” to quit her employment.<sup>1</sup> DEED argues that Newkirk did not quit her employment for a good reason caused by her employer and that Newkirk does not qualify under the medical-necessity exception to ineligibility. The ULJ found that Newkirk quit because the proposed full-time position “would have made her ineligible for Minnesota Care health insurance and lower cost prescriptions.” The ULJ held that, despite this health-care concern, the change from part-time to full-time would not be adverse to Newkirk and that she therefore did not have a good reason to quit.

Primarily, Newkirk argues that she quit her employment out of medical necessity. But when asked by the ULJ about physical restrictions on her job performance, Newkirk responded only that she couldn’t kneel, and she did not indicate that any other medical

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<sup>1</sup> Newkirk does not assert that her employment was involuntarily terminated. We therefore assume that sufficient evidence supports the ULJ’s finding in that regard.

issues limited her work performance. Newkirk testified that Gerard had accommodated her physical limitations when necessary and that those limitations would not prevent her from performing the expected duties of the on-call position. Newkirk's supervisor testified that Gerard had been accommodating her limitations and would have continued to do so in the full-time position. Only when Newkirk explained the importance of retaining her existing health insurance did she indicate that her injuries and physical restrictions made it necessary for her to decline full-time employment.

In light of this testimony, we need not consider the supplemental evidence proffered by Newkirk. Newkirk argues that this proposed evidence shows that "no counselor position was suitable" because her injuries were so serious that any counselor position would have been beyond the restrictions placed on Newkirk by her physicians. But Newkirk was already working in a counselor position and Gerard was accommodating her injuries to the extent that they had been made aware of them. If Newkirk had more severe injuries or restrictions, but did not provide such information to Gerard, Newkirk did not "inform[] the employer of the medical problem and request[] accommodation." Minn. Stat. § 268.095, subd. 1(7). And if Newkirk's injuries and restrictions were only those to which she testified, and which were being accommodated, the requirement that "no reasonable accommodation is made available" is not satisfied. *Id.* Therefore, even if taken as true, the proposed supplemental evidence does not avail Newkirk of the medical-necessity exception to ineligibility.

Alternatively, Newkirk's arguments could be construed as relating to the exception to ineligibility for having quit with a good reason caused by the employer. The

ULJ found that Newkirk quit because she could not work full-time and retain her existing lower-cost health insurance. However, in the full-time position Newkirk would have been provided health insurance and other benefits, and the ULJ found that the overall change would not have been adverse to her. While Newkirk may have correctly assessed the financial effect of this change, it does not constitute a good reason to quit that was caused by her employer. Further, the availability of lower-cost Minnesota Care health insurance is not “directly related to the employment.” *Id.* subd. 3(a)(1). Ultimately, the decision to decline to continue employment with Gerard in the full-time position was based on personal reasons, unrelated to Newkirk’s employment with Gerard. And “[a] good personal reason does not equate with good cause” to quit. *Kehoe v. Minn. Dep’t of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted). Therefore, this exception to ineligibility is likewise unavailing.

Reviewing the findings of fact in a light most favorable to the decision, the ULJ correctly determined that Newkirk quit because she did not want to lose her existing health insurance. This does not constitute a good reason to quit directly related to her employment, and no other exception to ineligibility applies to Newkirk.

**Affirmed; motion denied.**