STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1610

Janice Karen Kovala,
Relator,

vs.

CHS, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 8, 2013
Affirmed
Rodenberg, Judge

Department of Employment and Economic Development
File No. 29741151-3

Janice K. Kovala, St. Louis Park, Minnesota (pro se relator)

CHS, Inc., c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

Relator Janice Kovala appeals from an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she quit her employment without a good reason caused by her employer. Because the ULJ's determination that relator quit is supported by substantial evidence, and because relator does not meet any of the exceptions to ineligibility following a quit, we affirm.

FACTS

Relator began employment at CHS, Inc. in September 2009 working as a marketing manager and earning $91,500 per year. In April 2011, Greg McAfee became relator's new manager. Seven months later, relator received a negative review from McAfee, who informed her that he intended to rewrite her position description. Two months later, relator had not seen a rewrite of her position description and approached McAfee to discuss the situation. McAfee told relator that he had started the rewrite, but then realized he no longer wanted the position to change—he wanted a person to do the job as it was written. McAfee told relator that instead of rewriting her position description, he was creating a 90-day improvement plan for her. McAfee told relator that he had not made progress drafting the improvement plan because he was having difficulty figuring out how to measure the development of certain skills, such as "creative process thinking." McAfee then directed relator to speak with Michael Chanaka, the human-resources representative.

Chanaka told relator that she had three options: (1) quit, (2) continue working and be placed on a 90-day improvement plan, or (3) agree on a separation date, in which case CHS would not contest relator's eligibility for unemployment. Relator eventually opted to agree on a separation date, and one month later, it was agreed that relator's last day would be April 25, 2012.

Following her separation from CHS, relator applied to the Minnesota Department of Employment and Economic Development (DEED) for unemployment benefits. In late May 2012, a DEED clerk issued a determination of ineligibility. The DEED clerk found that relator quit her employment due to a personality conflict with a coworker and that the conflict had no substantial adverse impact on relator and would not have caused the average employee to quit and become unemployed.

Relator appealed this determination, arguing that the conflict with McAfee did have a substantial adverse effect on her employment that would have resulted in a "certain demotion or an implementation of a 90-day improvement plan with ultimate termination." She also argued that, as a part of the "general release" agreement she negotiated with CHS, the company had agreed it would not challenge her claim for unemployment, and that if the release is not "acceptable" to DEED, then she had been misled by CHS "on the matter of qualifying for unemployment benefits by agreeing to separate from my position."

A ULJ held a de novo hearing on relator's appeal. CHS did not appear at the hearing, and relator represented herself. Relator testified that she had chosen the separation-date option out of the three presented to her because her manager "didn't want

me. It's not that I didn't want to work there." When asked by the ULJ why she did not take the 90-day improvement plan option, she said that she was "under the belief that if [she] amicably split that [she] would qualify for unemployment" because Chanaka told her so. When asked what it was about her job that made her decide that it was not worth it to stay, relator explained that, after she had received the bad review, things were "getting very stressful" and she felt unable to "satisfy" McAfee. She went on to explain that she had never received a bad review and that receiving one was "disappointing" and left her with the impression that McAfee wanted to bring in his own team.

The ULJ issued his findings of fact and decision that relator was ineligible for benefits. The ULJ found that relator chose to separate from her employment at CHS and that she therefore quit. The ULJ found that relator did not quit for good reason caused by her employer even though she felt McAfee wanted to replace her, and even though relator was concerned that she would inevitably be demoted or fired regardless of what she chose to do. The ULJ noted that CHS's statements, which led relator to believe that she would be eligible for unemployment benefits if she separated amicably, were not adverse to relator and did not alter the determination that she is ineligible. The ULJ reasoned that, regardless of what CHS had represented to relator, "the department determines eligibility for benefits, not an employer."

Relator requested reconsideration, arguing that she agreed to resign because she had "good reasons to believe that [she] was going to be fired." She wanted to introduce new testimony and evidence which supported her belief that the 90-day improvement plan was illusory and that she was going to be fired regardless of whether she accepted

the separation agreement. The ULJ affirmed the original findings and determination of ineligibility, finding that relator did not demonstrate good cause for failing to submit at the appeal hearing the evidence that she attempted to submit on reconsideration, and that the prior decision was "factually and legally correct based upon a preponderance of the evidence." Relator appeals the ULJ's decision by writ of certiorari.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm, remand for further proceedings, or reverse or modify if the substantial rights of relator were prejudiced because the ULJ's decision was affected by errors of law or was otherwise "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2012).

This court conducts a de novo review of whether an applicant who quit employment is ineligible for benefits. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010). Whether an employee has been discharged or has voluntarily quit is a question of fact. *Stassen v. Lone Mountain Truck Leasing*, 814 N.W.2d 25, 31 (Minn. App. 2012). "This court views the ULJ's factual findings in the light most favorable to the decision," defers to the ULJ's credibility determinations, and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

A.

Relator argues that she did not quit, and that if she did quit, she did so because of a good reason caused by CHS and she is therefore eligible for unemployment benefits. The ULJ found that relator voluntarily quit. The record substantially supports the ULJ's factual finding, and we therefore do not disturb it. *See id.* Relator was not fired or otherwise demoted. Relator was given the option to stay in her position with a 90-day improvement plan. Instead, she decided she would rather negotiate a separation date with the understanding that CHS would not oppose her application for employment benefits.

Relator, on reconsideration by the ULJ and on appeal to this court, asserts that she has additional evidence and testimony to submit that supports her allegation that she was going to be fired if she stayed in her job and that the 90-day improvement plan was a sham. In deciding a request for reconsideration, the ULJ is required to consider the new evidence and order an additional evidentiary hearing if the involved party can show the new evidence (1) would likely change the outcome of the decision and there was good cause for failing to submit it at the first hearing; or (2) would show that evidence which was submitted and which affected the outcome of the first hearing was likely false. Minn. Stat. § 268.105, subd. 2(c) (2012). "This court will defer to the ULJ's decision not to hold an additional hearing." *Ywswf v. Teleplan Wireless Servs.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

The ULJ concluded that relator neither showed good cause for failing to submit additional evidence nor demonstrated that evidence submitted at the initial hearing was likely false. The record supports the ULJ's conclusion. Nothing in the record suggests

that evidence at the initial hearing was false, and relator has not identified with any specificity what additional evidence she would have offered at a second evidentiary hearing. We defer to the ULJ's refusal to consider arguments and evidence not presented at relator's evidentiary hearing.

B.

Relator argues that, under the circumstances proven at the evidentiary hearing, her decision to separate from employment at an agreed-upon date was not a voluntary quit. Her contention here, as it was to the ULJ, is that CHS was going to terminate her employment and the "options" presented to her by Chanaka were illusory. Generally, an employee who quits employment is not eligible for unemployment benefits unless the employees falls within a specific exception. Minn. Stat. § 268.095, subd. 1 (2012). An applicant is eligible for benefits even if the applicant quit, if the applicant quit "because of a good reason caused by the employer." *Id.*, subd. 1(1). Subdivision 3 defines "good reason caused by the employer," and provides, in part:

> (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
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> (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.
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> . . . .
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> (c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.
>
> . . . .

> (e) Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting.

Id., subd 3 (2012).[1]

An employee who claims to have quit for good reason caused by the employer must have quit for reasons that are "compelling, whether it was real and not imaginary, substantial and not trifling, reasonable and not whimsical and capricious." *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 (1976). An adverse change to employment terms or conditions that is merely speculative is not a good reason to quit caused by an employer. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 802 (Minn. App. 2005) (holding that relator's "apprehension about loss of income" was "speculative" and therefore not good cause to quit because she had not been given any assurance about her new income level and failed to seek additional information from her employer before quitting), *review denied* (Minn. July 19, 2005). Personality conflicts with coworkers are generally not considered a good reason to quit caused by an employer. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that an employee did not quit for good reason caused by the employer where the employer's conduct was not harassment and the situation was more "properly viewed as one of a personality conflict").

[1] The definition of "good reason caused by the employer" currently at Minn. Stat. § 268.095, subd. 3, was amended in 1999 and again in 2004. To the extent caselaw relied on in this opinion cites to earlier versions of the relevant statutory language, the earlier language is substantially similar to language applicable in this case and does not alter the analysis or result.

Applying these principles here, the ULJ properly concluded that relator did not quit for "good reason caused by her employer" within the meaning of the statute. Relator agrees that she could have continued working for CHS under a 90-day improvement plan. At the time relator agreed to separate from employment at CHS, her job description had not been rewritten, she had not been demoted, and she had not been fired. To the contrary, two of the three options presented to her included staying on the job for some time. It seems evident that relator had a strained relationship with McAfee but did not claim harassment. To the extent that relator quit because she was convinced she was going to be laid off anyway, such a layoff was speculative. Moreover, the statute specifically provides that even where a layoff is *certain*, quitting for that reason is not a good reason caused by the employer. *See* Minn. Stat. § 268.095, subd. 3(e); *Bongiovanni*, 370 N.W.2d at 698–99 (holding that relator was ineligible for unemployment benefits even though the employer had made it clear that he "wanted to get rid of her" because relator and the employer agreed on an end date and she quit before her employer took any formal action against her).

CHS's promise to not oppose relator's receipt of unemployment benefits does not entitle relator to benefits. While it is unfortunate that CHS and relator appear to have mistakenly believed that CHS could influence whether relator received unemployment benefits, no employer has such authority and any agreements to the contrary are not binding on DEED or this court. *See* Minn. Stat. § 268.069, subd. 2 (2012) (stating that "[a]ny agreement between an applicant and an employer is not binding on [DEED] in determining an applicant's entitlement" to unemployment benefits). Even if relator felt

incentivized to leave because of her belief that she would receive unemployment benefits, her decision to leave was still voluntary. *See Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 890–91 (Minn. App. 1997) (holding that an employee who voluntarily terminates employment to take advantage of an early retirement incentive program is ineligible for benefits because that employee could have chosen to remain employed).

Relator chose to leave employment rather than endure a 90-day improvement plan, at the end of which she feared she would be fired or demoted. This is not a situation under *Bongiovanni* or *Kehoe* that would cause "an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a)(3).

Affirmed.