STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1613

Robert S. Ervasti,
Relator,

vs.

County of Hennepin,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 2, 2008
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 6486 07

Robert S. Ervasti, 3372 Texas Avenue South, St. Louis Park, MN 55426 (pro se relator)

County of Hennepin, Attn: Office of Budget & Finance/Payroll, 300 South Sixth Street, #4, Minneapolis, MN 55487-0999 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

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

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

KALITOWSKI, Judge

Relator Robert S. Ervasti challenges the determination of the unemployment-law judge (ULJ) that he quit his job and was disqualified from receiving unemployment benefits. Relator argues that the ULJ (1) was biased and made several errors while conducting relator's telephone hearing and (2) erred in concluding that relator is not qualified for unemployment benefits. Relator claims that he quit because of medical necessity or, in the alternative, because he had good reason to quit attributable to his employer. We affirm.

D E C I S I O N

I.

Relator argues that he did not receive a fair hearing because the unemployment-law judge (ULJ) (1) "had a predisposition of discrimination toward [relator's] mental illness"; (2) "did nothing [during the hearing] but badger [relator] about why [he] left" his employer; and (3) ignored relator's requests to subpoena certain e-mails from the employer. We disagree.

A ULJ is to conduct an evidentiary hearing "as an evidence gathering inquiry and not an adversarial proceeding." Minn. Stat. § 268.105, subd. 1(b) (2006). The ULJ "shall ensure that all relevant facts are clearly and fully developed." *Id*. A hearing generally is considered fair and evenhanded if both parties are afforded an opportunity to give statements and cross-examine witnesses. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007).

The ULJ "may . . . issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property considered necessary as evidence in connection with the subject matter of an evidentiary hearing." Minn. Stat. § 268.105, subd. 4 (2006). The ULJ may deny a subpoena request "if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." Minn. R. 3310.2914, subp. 1 (2007).

Here, our review of the record indicates that the telephone hearing was conducted fairly. What relator describes as "badgering" was the ULJ's effort to ensure that all relevant facts were clearly and fully developed. *See* Minn. Stat. § 268.105, subd. 1(b). The record further indicates that both parties were afforded the opportunity to give statements and to question witnesses.

Relator's only specific subpoena request was for e-mails from respondent's system that "would show that other people under [his supervisor] had complained about conditions working under [his supervisor]." The ULJ properly declined this request because the requested e-mails would be immaterial and irrelevant. Relator is disqualified from unemployment benefits unless he "complain[ed] to the employer and [gave] the employer a reasonable opportunity to correct the adverse working conditions." Minn. Stat. § 268.095, subd. 3(c) (2006). Although relator testified that he thought he complained about the working conditions under his supervisor, there is no other evidence showing that his employer was notified about the conflict. And relator did not suggest that the requested e-mails would establish that he complained about adverse working conditions. *See id*. Because the requested documents would not have shed light on

relator's qualification for unemployment benefits, it was within the ULJ's discretion to refuse to subpoena them.

II.

Relator argues that the ULJ erred in concluding that he is not qualified for unemployment benefits. Because relator (1) never informed respondent that he had medical issues that prompted him to quit his job and (2) did not have good reason attributable to the employer to quit, we affirm.

This court may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if

> the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
>
> > (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) (2006). The reason an individual quit his employment is a question of fact. *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986). Findings of fact are viewed in the light most favorable to the ULJ's decision, and deference is given to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether the ULJ's findings establish that the applicant falls under a statutory exception to disqualification is a question of law,

which we review de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Medical Necessity

An applicant is qualified to receive unemployment benefits if "the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform[ed] the employer of the serious illness or injury and request[ed] accommodation and no reasonable accommodation [was] made available." Minn. Stat. § 268.095, subd. 1(7) (2006).

Here, there is substantial evidence that relator's depression and anxiety made it medically necessary that he quit. But relator admitted that he never informed respondent about his diagnosis. He told his supervisor that his problems working were due to his upcoming back surgery. Relator's vague references to being anxious or stressed do not qualify as "inform[ing] the employer of the serious illness." *See* Minn. Stat. § 268.095, subd. 1(7). Moreover, his testimony that his supervisor told him that he should work from home if he felt stressed does not amount to a request for reasonable accommodation under the statute. Relator's supervisor confirmed that relator "wasn't given any other privileges than any other folks on [his] staff." Accordingly, we conclude that the ULJ did not err in concluding that relator was not qualified for unemployment benefits under the medical-necessity exception.

Good Reason Caused by the Employer

Alternatively, an individual who quits his job is not disqualified from receiving unemployment benefits if he "quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1) (2006).

> A good reason caused by the employer for quitting is a reason: (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., subd. 3(a) (2006). "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." *Id*., subd. 3(c).

But "[t]he phrase 'good cause attributable to the employer' does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986); *see also Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that employee did not have a good reason to quit when her supervisor made it clear that he wanted to get rid of her, stopped talking to her, and greatly reduced her work duties). Further, "[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).

Here, the ULJ properly determined that relator failed to establish that he had good cause to quit his employment. Although relator contends that he was subjected to a "hostile work environment," his complaints about his supervisors do not depict conduct that rose to that level. During the hearing, relator complained that his immediate supervisor "was very inconsistent" and was "difficult and argumentative." Relator also questioned whether the supervisor gave his e-mails due consideration. But relator did not point to specific incidents that made the work environment hostile and instead expressed mere frustration and dissatisfaction with his working conditions in general. Moreover, although the record indicates that relator's resignation letter refers to a hostile environment, the record also contains an e-mail from relator to his supervisor stating, "I want you to know that I have the utmost respect for you and that this decision has nothing to do with you directly." Accordingly, we conclude the ULJ did not err in determining that relator did not have good cause to quit and is therefore disqualified from receiving unemployment benefits.

Affirmed.