STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1941

Jean M. Studniski,
Relator,

vs.

Baja St. Cloud LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 30, 2008
Reversed
Minge, Judge

Department of Employment and Economic Development
File No. 9032 07

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Baja St. Cloud, LLC, 2922 Upper 55th Street, Inver Grove Heights, MN 55076 (pro se respondent)

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Schellhas, Judge.

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

MINGE, Judge

Relator brings a certiorari appeal from the determination of an unemployment law judge (ULJ) that she was disqualified from receiving unemployment insurance benefits. Because we conclude that relator quit for good reason caused by her employer, we reverse.

FACTS

Relator Jean Studniski worked for Baja St. Cloud, LLC (Baja), a fast-food Mexican restaurant, from the summer of 2004 until May 2007. Studniski had approximately 22 years of experience in the food-service industry.

Mary Sims was the general manager of the restaurant. Sims hired several of her family members to work for Baja and paid them more than Studniski or any of the other full-time employees. Studniski testified that she was assigned to work in undesirable positions such as the grill area, and that Sims' relatives worked in preferable positions. Although she complained of the way she was treated in comparison to the manager's relatives, Sims rejected her complaints and one of Baja's owners told her that the manager could do as she wanted.

During lunchtime on May 7, 2007, Studniski had a hostile work encounter with the manager's son, Marv Sims. Marv started at Baja about one week earlier. At the time of the incident, only Marv and Studniski were working. Studniski was cooking in the back, and a customer was waiting for service at the counter. When Studniski walked from the grill area and asked the customer if she could help him, Marv ordered her back

to the grill. Studniski protested, and Marv called her a "f-cking b-tch" in front of customers.

Studniski returned to working in the grill area. She testified that "I was so upset I couldn't even concentrate and dealing with sharp knives, it wasn't in my best, it was affecting my health." Studniski continued to work through the lunch rush. She waited for the manager to return to the restaurant so she could speak with her, but, when the manager had not returned, Studniski decided to leave. Then the manager walked in as Studniski was leaving. When Studniski told her what Marv had said, the manager responded that her son would not have used the derogatory and offensive language and that Studniski was lying about what happened. Studniski left, did not return to work, and did not contact her employer again.

After Studniski unsuccessfully applied for unemployment benefits, she requested review by a ULJ. The ULJ determined that Studniski quit without good reason caused by Baja and was therefore disqualified from receiving benefits. The decision was affirmed on reconsideration. This certiorari appeal follows.

D E C I S I O N

The issue in this certiorari appeal is whether the findings and the undisputed evidence in the record support the ULJ's determination that Studniski quit without good reason caused by her employer. Here, Studniski agrees with the basic facts as found by the ULJ. The employer did not appear and there is no dispute over the record. In this setting, we consider whether Studniski's May 7 incident with Marv, together with the

manager's refusal to provide Studniski with an expectation of assistance following that incident, gave Studniski good reason to quit.

This court may reverse or modify a ULJ's decision if an adverse decision by the ULJ is caused by legal errors or is not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006). Questions of law are reviewed de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an applicant quit for good reason caused by the employer is a question of law reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

An applicant who quits employment is disqualified from receiving benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2006). One exception is when an employee quits because of a good reason caused by the employer. *Id.*, subd. 1(1). A good reason to quit caused by the employer must be "directly related to the employment . . . for which the employer is responsible," "adverse" to the employee, and enough to "compel an average, reasonable worker to quit and become unemployed." *Id.*, subd. 3(a) (2006). An employee demonstrates "good cause" for quitting "attributable to the employer" when the employee has (1) been subjected to adverse conditions and (2) given the employer notice of such conditions and an opportunity to correct the problem. Minn. Stat. § 268.095, subd. 3(c).

Workers facing harassment and other untenable conditions are not denied unemployment insurance benefits if they quit because steps are not taken to resolve those conditions. *See Wetterhahn v. Kimm Co.*, 430 N.W.2d 4, 5-6 (Minn. App. 1988) (determining that an employee who was sworn and yelled at by a co-worker and who

gave notice of the behavior to her employer had "good cause attributable to the employer" for quitting when her employer's response was ineffectual). If the employee is given an expectation of assistance from the employer, he or she then has a duty to keep the employer apprised of any additional harassment. *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838 (Minn. App. 1987).

Where an employee offered a reasonable opportunity to correct the problem but has been given no assurance that adverse conditions will be remedied and no expectation of assistance from the employer, failure to provide the employer with continuing opportunities to correct the problem will not disqualify the employee from receiving unemployment insurance benefits. *Id.* at 838-39; *Porrazzo v. Nabisco, Inc.*, 360 N.W.2d 662, 664 (Minn. App. 1985). An employer was deemed to have knowledge of continuing adverse conditions where the supervisor was the source of many of the employee's problems and the employee had raised concerns with both the supervisor and representatives of the employer. *Porrazzo*, 360 N.W.2d at 664; *see also Dura Supreme v. Kienholz*, 381 N.W.2d 92, 95 (Minn. App. 1986) (determining that the employer had not provided reasonable assurances of assistance where the employee's supervisor told the employee to take the harassment as a joke).

Here, the ULJ found that Marv Sims called Studniski an extremely vulgar name in front of customers and that the manager summarily disregarded the issue. Being yelled at and called extremely offensive names in front of customers constitutes an adverse condition that would compel a reasonable worker to quit. *See Wetterhahn*, 430 N.W.2d

at 5-6. We conclude that Studniski was subjected to an adverse condition directly related to her employment that would cause a reasonable employee to quit.

The next question is whether Baja was given a reasonable opportunity to correct the adverse condition. An employee must provide the employer with a reasonable opportunity to correct a problem. Minn. Stat. § 268.095, subd. 3(c). The ULJ concluded that Studniski did not give Baja a reasonable opportunity to correct problems associated with the behavior of Marv Sims, the manager's son.

Here, the ULJ found that Studniski told the manager that her son had been disrespectful and that the manager replied that her son would not do that. The undisputed record indicates that Studniski told the manager that Marv called her a "f-cking b-tch" and that the manager immediately and bruskly responded that Marv would not do that and that Studniski was lying. Based on this undisputed record and the ULJ's factual findings, we conclude that Baja was given a reasonable opportunity to address the conditions or to provide Studniski with assurances that the behavior would be addressed. We further conclude that when the manager declined to address the issue, said her son would not do such a thing, and told Studniski that she was lying, Studniski had no reason to expect that Baja would further investigate or provide assistance in dealing with the offending conduct of her co-worker. As a result, Studniski was not required to continue working and trying to resolve the situation as a condition of obtaining unemployment insurance benefits.

In sum, we conclude that Studniski quit for good reason caused by her employer and reverse the decision of the ULJ.

Reversed.

Dated: