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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2265**

Theresa Magariner,
Relator,

vs.

Viewcrest Health Center Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 20, 2009
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 21216971-3

Theresa M. Magariner, 10765 South Patterson Road, Solon Springs, WI 54873 (pro se
relator)

Viewcrest Health Center Inc., 3111 Church Place, Duluth, MN 55811-2925 (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
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respondent Department)

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

UNPUBLISHED OPINION

JOHNSON, Judge

Theresa Magariner quit her job at Viewcrest Health Center Inc. She challenges the decision of an unemployment law judge (ULJ) that she is ineligible for unemployment insurance benefits, arguing that she quit her job for a good reason caused by her employer. We affirm.

FACTS

Magariner was employed by Viewcrest at a nursing home in Duluth from September 10, 2007, to August 26, 2008. She held the position of health unit coordinator (HUC). Her duties included transcription of physician orders, scheduling of appointments, and data entry.

During her employment at Viewcrest, Magariner had numerous conflicts with her supervisor, Lynn Shepard, who was Viewcrest's director of nursing. On July 10, 2008, Shepard placed Magariner on a performance improvement plan due to three identified problems with her performance. The first problem was excessive absenteeism. The plan states that Magariner was absent more than 20 times in a nine-month period, not including a leave of absence Magariner took before May 1, 2008, due to a serious health issue. The second problem was "[b]ehavioral concerns," including "talking inappropriately about co-workers in front of other staff." The third problem was her tendency to bypass the established chain of command when making complaints about co-workers. Magariner was instructed to direct any concerns "to the appropriate level."

On Thursday, August 21, 2008, Magariner was informed that, effective Monday, August 25, her working hours, which had been 7:00 a.m. to 3:30 p.m., would be changed to 11:00 a.m. to 7:30 p.m. That same day, Magariner wrote a letter to Shepard and six other managers, including Robert Dahl, the administrator of the nursing home. In her letter, she complained about her new work schedule, saying that she had scheduled future doctor's appointments for the late afternoon and that she felt that she was being harassed and discriminated against. After receiving Magariner's letter, Viewcrest convened a review panel that included both management and union representatives. The review panel unanimously approved the change to Magariner's schedule. Dahl informed Magariner that she could keep her existing appointments but, in the future, should schedule appointments around her new work schedule.

On Monday, August 25, Magariner called in sick and was absent from work. The next day, she appeared for work but tendered her written resignation soon after her arrival.

Magariner sought unemployment benefits. The Department of Employment and Economic Development (DEED) determined that she was ineligible. Magariner appealed from the initial determination, and a telephonic hearing was held on three days in October 2008 before a ULJ. The ULJ affirmed the determination that Magariner was ineligible, reasoning that Magariner did not quit her employment for a good reason caused by her employer. After Magariner sought reconsideration of the decision, the ULJ affirmed it. Magariner appeals by way of a writ of certiorari.

DECISION

Magariner argues that the ULJ erred by finding that she did not quit her job for a good reason caused by the employer. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions of law, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). The evidentiary hearing is an evidence-gathering proceeding, not an adversarial contest, and is conducted without regard to any particular burden of proof. *Id.*, subd. 1(b) (2008); *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (noting that, due to amendment to statute, applicant no longer bears burden of proof), *review denied* (Minn. Mar. 30, 2004). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee was properly found to be ineligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.*

Employees who quit employment are ineligible for unemployment benefits, except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (2008). One exception applies if the applicant quit "because of a good reason caused by the employer." *Id.*, subd. 1(1). A "good reason" 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) (2008). In addition, adverse working conditions may be

considered a good reason to quit only if the applicant “complain[ed] to the employer and [gave] the employer a reasonable opportunity to correct the adverse working conditions.” *Id.*, subd. 3(c) (2008); *see also Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 595 (Minn. App. 2006).

The ULJ found that the “preponderance of the evidence is that Magariner did not quit for a good reason caused by her employer.” The ULJ reviewed the issues alleged by Magariner to be harassment and discrimination, such as the requirement that she follow the chain of command, the change in her work schedule, the poor performance of a co-worker (who eventually was terminated), and being locked out of the records room on one occasion (apparently due to inadvertence). The ULJ concluded that “[t]here is no evidence” that the employer’s purpose “was to harass or discriminate against Magariner.” The ULJ also reasoned that “Magariner did not give the employer a reasonable opportunity to address her concerns” because she “quit within one hour of arriving to work on August 26,” 2008.

On appeal to this court, Magariner repeats her arguments that she quit for a good reason, namely, that her employer was harassing her and discriminating against her. But the record supports the ULJ’s contrary conclusion. The record shows that the employer changed Magariner’s work schedule to better care for patients inasmuch as physician orders came in at all hours of day, including evenings. These are valid business reasons. A change in a work schedule that is merely inconvenient to the employee does not constitute a good reason to quit caused by the employer. *Markert v. National Car Rental*, 349 N.W.2d 859, 861 (Minn. App. 1984). Although Magariner believed that a newly

hired HUC should have been given the later shift, her disagreement with management's decision does not give her a good reason to quit. The other reasons for Magariner's decision to quit are even weaker and do not require further discussion.

Even if Magariner could establish that she had a good reason to quit, she cannot overcome the ULJ's alternative finding that she failed to give Viewcrest an opportunity to remedy any adverse working conditions. Magariner wrote a letter to management on Thursday, August 21, 2008. Magariner was absent on Monday, August 25, and resigned on Tuesday, August 26. By quitting so soon after sending her letter, Magariner failed to "give the employer a reasonable opportunity to correct the adverse working conditions." Minn. Stat. § 268.095, subd. 3(c).

In sum, the ULJ did not err by concluding that Magariner did not quit her job for a good reason caused by her employer.

Affirmed.