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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1147**

Shelley Ford,
Relator,

vs.

Minnesota State District Courts,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 7, 2014
Affirmed
Bjorkman, Judge
Dissenting, Randall, Judge**

Department of Employment and Economic Development
File No. 30808456-3

Shelley Ford, Brainerd, Minnesota (pro se relator)

Minnesota State District Courts, Ninth Judicial District, Bemidji, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she quit her employment without a good reason caused by her employer. We affirm.

FACTS

Starting in March 2008, relator Shelley Ford worked for respondent Minnesota State District Courts as a court reporter in the ninth judicial district. She was initially assigned to a judge chambered near where she lived. In November 2010, Ford complained to union stewards that the judge regularly touched himself in a manner that she considered inappropriate and upsetting. Court administration treated the report as a harassment complaint and spoke to the judge. He refrained from the touching for a while but eventually resumed the behavior. Ford complained to union stewards again in May 2011, and administration responded in the same manner as before. Although administration did not identify Ford as the complainant, the judge questioned Ford about the complaints and eventually stopped speaking to her.

In June 2011, Ford applied for and obtained a position as a court reporter for a judge chambered approximately 90 miles away from her home. Ford disliked the commute but had a good working relationship with the judge. In December 2012, the ninth district human-resources manager contacted Ford about what would happen when the judge retired in early 2013. Per the district's policy, Ford was given the option to

continue working on assignment throughout the district until a new judge was appointed. Ford accepted this arrangement.

On January 14, assignment scheduler Pam Norenberg asked Ford to cover for a coworker's scheduled absence on March 7. Ford said she could not. Norenberg asked if Ford was taking vacation that day, and Ford said, "I think I'm doing doc appointments that day and possibly vacation the rest of the weekend." Norenberg told Ford that she needed to request time off with her supervisor. Ford responded, "Yeah, I don't know yet for sure what my plan is." Later that day, Norenberg told Ford that she had assigned Ford to cover the March 7 shift. Ford felt that Norenberg had acted unfairly but did not complain to anyone in court administration about her concerns.

On January 17, Norenberg told Ford that she would need to vacate her office for three days in mid-April because the first judge would be working in her courthouse and his court reporter would be using her office. Ford felt it was unfair to ask her to accommodate the judge she had complained about, but she did not voice her concerns to Norenberg or anyone else in court administration. Ford did complain to a union steward about the request to move out of her office and certain of Norenberg's scheduling decisions.

Ford quit her employment effective January 31. She subsequently established a benefits account with the Minnesota Department of Employment and Economic Development (DEED) and applied for unemployment benefits. DEED determined that Ford is ineligible for benefits because she quit her employment. Ford appealed. After a hearing, the ULJ determined that Ford quit her employment without a good reason caused

by her employer and therefore is ineligible for unemployment benefits. Ford sought reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

We review a ULJ's decision to determine whether it is "(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) (2012).

An applicant who quits employment is not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception is when an applicant quits for "a good reason caused by the employer." *Id.*, subd. 1(1). To qualify for this exception, the reason must (1) be directly related to the employment and for which the employer is responsible; (2) be adverse to the applicant; and (3) compel an average, reasonable employee to quit and become unemployed. *Id.*, subd. 3(a) (2012).

The reason why an applicant quit presents a question of fact. *See Embaby v. Dep't of Jobs & Training*, 397 N.W.2d 609, 611 (Minn. App. 1986). We review factual findings in the light most favorable to the ULJ's decision and will not disturb findings that have substantial evidentiary support. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an applicant's reason for quitting constitutes good cause attributable to the employer is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). In determining whether an

employee's concerns would compel a reasonable employee to quit, we consider "the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted). "A good personal reason does not equate with good cause." *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted).

The ULJ found that Ford quit because of the first judge's behavior and because she felt that Norenberg treated her unfairly. The ULJ determined that neither of these constitutes a good reason caused by the employer. Ford does not challenge the ULJ's findings regarding her reasons for quitting. Accordingly, we focus on whether these reasons constitute good cause attributable to her employer.

First, the ULJ found that the first judge's behavior "was inappropriate" but did not provide a good reason for Ford to quit because court administration reasonably responded to Ford's complaints and Ford had not worked with that judge for approximately 19 months by the time that she quit. We agree. Ford provides no evidence to support her contention that the first judge's behavior "has continued to affect her to this day." At most, the evidence indicates that Ford was asked to vacate her office for three days to accommodate the first judge's court reporter. While these circumstances may have been upsetting and inconvenient and may have given Ford a good personal reason to quit, we conclude they are not the type of circumstances that would cause an average reasonable worker to quit and become unemployed.

Second, the ULJ found that Norenberg “could have used more tact at times” but did not violate employer policies or the collective bargaining agreement by asking Ford to take specific assignments or giving her short notice of assignments. The testimony of the ninth district human-resources manager supports these findings. We conclude that Norenberg’s conduct did not create an environment so adverse to Ford that it would compel the average, reasonable worker to quit and become unemployed.

In sum, we conclude that Ford quit without a good reason caused by her employer and therefore is ineligible for unemployment benefits.

Affirmed.

RANDALL, Judge (dissenting)

I respectfully dissent. On this record, I conclude that relator is entitled to unemployment benefits because she had a delayed good reason to quit.

I accept the majority's statement of the facts but would add that Ford did not "voluntarily" decide for a change of location. Ford moved her workplace because she was subjected to actual harassment of record, and court administration finally accommodated her attempt to avoid the harassment.

This is not an easy case for the ninth judicial district bench or its court administrator. Nor is this an easy case for an appellate court, or an appellate judge. But it is before us, we have a record, and we will decide it.

First, relator having to move to keep a good job was a hardship. Driving 90 miles one way is not an easy commute, and in some northern Minnesota winters is a "terrible commute." Relator would not have ended up there except for the harassment and "closed door treatment" she got from the judge in question after she complained.

Then later, relator testified that she was expected to temporarily "vacate her office" because the first judge was coming to sit for several days. She felt, honestly, why should she have to move offices to accommodate the judge when she had already moved 90 miles away to avoid him.

I see this as a case of a "delayed good reason to quit." I cannot fault relator for attempting to keep a good-paying job by moving. *See Baker v. Fanny Farmer Candy Shops*, 394 N.W.2d 564, 567 (Minn. App. 1986) (holding that employee did not waive complaint against employer by "continuing to work instead of immediately quitting when

her complaints went unheard”). But even that did not remove the sting of the conduct she complained about, nor what she claims was a failure of district court administration in doing anything about the harassment for the longest time because it involved a sitting judge.

In her brief, relator points out that she and “other workers in the courthouse talked about [the first judge’s] behavior and what they could do about it,” and that court administration told one employee, “We’re not touching that with a 10-foot pole.” Ford sought help from district court administration multiple times and sought help from the Equal Employment Opportunity Commission; she even took a job 90 miles away to avoid the behavior that caused her such emotional trauma that she began taking anti-anxiety medication. That is not much relief from any of these “resources.”

On this narrow set of facts, I conclude that relator had good reason to quit back in June 2011 when her second complaint exacerbated, rather than corrected, the harassment, and had good reason to quit when she did. I find that her claim for unemployment benefits is justified.¹

¹ This is not the case to stretch to affirm what is becoming almost routine: the denial of unemployment benefits by a ULJ because “the employee did not have a good reason to quit.”