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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0313

Charlotte Smith,
Relator,

vs.

Health Partners, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 5, 2017
Affirmed
Halbrooks, Judge

Department of Employment and Economic Development
File No. 34791220-5

Charlotte M. Smith, Burnsville, Minnesota (pro se relator)

Health Partners, Inc., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this certiorari appeal, relator challenges the decision of an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits, arguing that the ULJ erred in concluding that she did not quit for a good reason caused by respondent employer and she did not receive a fair hearing. We affirm.

FACTS

In July 2015, relator Charlotte Smith began working as a senior IT project manager for respondent Health Partners, Inc. earning $90,000 per year. She immediately had concerns that the work on some of her assigned projects was not being done properly. She raised her concerns to her supervisors but was told that the team lacked the time to address them. Smith's concerns increased based on her belief that certain vendors did not have the appropriate intellectual-property rights to access Health Partners' proprietary information. Because she believed some of her coworkers were acting in bad faith, she filed a whistleblower complaint with the Equal Employment Opportunity Commission (EEOC). Smith was taken off her project and reassigned to a position with reduced responsibilities, but her compensation did not change.

In October 2015, Smith's supervisor asked her to go on paid leave while Health Partners investigated her concerns. Smith agreed to do so. Following its investigation, Health Partners concluded that Smith's concerns were unsubstantiated. On December 16, 2015, Health Partners offered Smith a severance package that included a one-time payment

of $45,000 if she agreed to resign and withdraw her EEOC complaint. On December 29, 2015, she accepted the offer and resigned effective December 31, 2015.

Smith applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) determined that she is ineligible to receive unemployment benefits. Smith appealed this determination, arguing that DEED ignored the material facts she submitted with her application. The ULJ held an evidentiary hearing and concluded that Smith is not eligible to receive unemployment benefits because she voluntarily quit to accept a severance package.

After Smith requested reconsideration of the decision, the ULJ set aside its findings of fact and ordered another evidentiary hearing. Smith and two Health Partners employees, D.Z. and S.R., testified at the second evidentiary hearing. The ULJ again found that Smith quit to accept a severance package and concluded that she is ineligible to receive unemployment benefits because she did not quit for a good reason caused by her employer. Smith again requested reconsideration, and the ULJ affirmed its decision. This appeal follows.

D E C I S I O N

Upon review of an unemployment-benefits decision, we may affirm or remand for further proceedings, or we may reverse the ULJ's decision if its "findings, inferences, conclusion, or decision are: . . . made upon unlawful procedure . . . [or] unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7 (2016).

I.

Smith argues that the ULJ erred by determining that she did not quit for a good reason caused by her employer. The ULJ found that Smith quit her employment for two reasons: (1) "to accept a severance package" and (2) "because she feared if she did not do so, she would be discharged."[1] The ULJ also found that "[b]oth parties concede that the decision to end the employment was Smith's."

Smith first argues that the ULJ erred in its determination of the reason she quit. She contends that her employer's failure to give her "reasonable assistance given the long term impact of completing an unethical direction" caused her to quit. An individual's reason to quit employment is a question of fact. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986). We view "the ULJ's factual findings in the light most favorable to the decision and [will] not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted).

During the first evidentiary hearing, the ULJ questioned Smith about the circumstances under which she quit:

> Q Did you resign the position on December 31 of '15[?]
> A Yes I did.
> Q Was that your choice[?]
> A It was mutually agreed upon. I was offered a separation agreement and I accepted the agreement.

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[1] Because Smith and DEED both agree that the record lacks support for the ULJ's finding that Smith quit because she feared that she would be discharged and because it is not essential to resolve this matter, we do not further address it.

In the second evidentiary hearing, Smith testified that she "accepted the offer to leave." Viewing the ULJ's factual findings in the light most favorable to its decision, we conclude that the record supports the finding that Smith quit in order to accept a severance package.

Next, we turn to whether the ULJ erred by concluding that Smith did not quit for a good reason caused by her employer. "The issue of whether an employee had good reason to quit is a question of law reviewed de novo." *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

An individual who quits employment is ineligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2016). One exception permits an individual who quit "because of a good reason caused by the employer" to receive unemployment benefits. *Id.*, subd. 1(1).

> 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) (2016). Whether the reason would compel an average, reasonable worker to quit is an objective standard. *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010). But quitting in order to accept a severance package is not a good reason caused by the employer. *See Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 368 (Minn. App. 2000) ("A good personal reason does not

equate with good cause."), *review denied* (Minn. Aug. 15, 2000). Thus, Smith did not quit for a good reason caused by her employer.

Smith argues that had she complied with her employer's requests, she risked the possibility of incarceration and asset forfeiture, and no reasonable worker would have engaged in that type of risk. But because the ULJ found that she quit to accept a severance package and because there is no support in the record for the allegations, we reject this argument.

Because Smith did not quit for a good reason caused by the employer, we conclude that the ULJ did not err by determining that she is ineligible to receive unemployment benefits.

II.

Citing multiple alleged procedural errors and arguing that the ULJ was extremely biased against her, Smith contends that she did not receive a fair hearing. We disagree.

A ULJ has "a duty to reasonably assist pro se parties with the presentation of the evidence and the proper development of the record." *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 355-56 (Minn. App. 2016). "This is not to say that a ULJ is the unrepresented party's advocate; the evidentiary hearing is a fact-gathering endeavor, and, like all judicial and quasi-judicial fact-gathering endeavors, it is still adversarial and requires the judicial officer to maintain neutrality to assure fairness to all parties." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 32 (Minn. App. 2012) (citation omitted). "[P]ro se litigants are generally held to the same standards as attorneys and must

comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

The record here demonstrates that the ULJ was patient and thorough at both evidentiary hearings. The ULJ granted Smith's first request for reconsideration because, although Smith refused to answer many questions during the first hearing, her request for reconsideration provided details that, if found to be true, might have changed the decision from the first hearing. The ULJ asked open-ended questions to elicit a specific explanation about what influenced Smith's decision to quit and ended by asking her, "Is there anything I didn't ask you that you wanted to let me know here[?]"

Smith first argues that the ULJ failed to develop the record based on a memorandum authored by former Deputy Attorney General Sally Yates that contains guidance on how Department of Justice personnel should handle corporate misconduct matters. *See* U.S. Dep't of Just., *Individual Accountability for Corporate wrongdoing* (Sept. 9, 2015), https://www.justice.gov/dag/individual-accountability. Because Smith never mentioned the memorandum as an issue during the evidentiary hearing, we do not consider it on appeal. *See* Minn. R. Civ. App. P. 110.01 (defining the scope of the record on appeal).

Next, Smith contends that the ULJ failed to instruct her "that she may have had the burden of proof to show harassment." "An applicant's entitlement to unemployment benefits must be determined based upon that information available without regard to a burden of proof." Minn. Stat. § 268.069, subd. 2 (2016); *see Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 461 (Minn. 2016). This argument is meritless because no burden of proof exists here.

Smith also argues that the ULJ failed to help her subpoena witnesses and records. She did not request any subpoenas for either evidentiary hearing, but in her second request for reconsideration, she stated, "I hereby request that [H.E.], manager of Human Resources, appear as a witness at the hearing or provide a signed statement attesting to her knowledge of these facts."

In a request for reconsideration, the ULJ must not consider new evidence except to determine whether to order an additional hearing. Minn. Stat. § 268.105, subd. 2(c) (2016). A ULJ must order an additional evidentiary hearing if the applicant demonstrates that the new evidence:

> (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or
>
> (2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id.

The ULJ affirmed its decision. The ULJ found D.Z.'s testimony credible and reasoned that Smith was simply challenging its credibility determination. Because we defer to the ULJ's credibility determinations, we conclude that the ULJ did not err in denying Smith's second request for reconsideration. *See Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that this court gives "deference to the credibility determinations made by the ULJ").

Smith asserts that the ULJ made two oral expressions that are not in the transcript that demonstrate "extreme prejudice" against her. "If any difference arises as to whether

the record truly discloses what occurred [at an evidentiary hearing], the difference shall be submitted to and determined by the [ULJ] and the record made to conform." Minn. R. Civ. App. P. 110.05; *see Doty v. Doty*, 533 N.W.2d 72, 75 (Minn. App. 1995) ("We will not resolve a factual dispute about the accuracy of the transcript . . . ."). Because Smith did not ask the ULJ to note her concerns in the transcript, we decline to address it on appeal.

Smith also asserts that the ULJ was racially biased against her because the record includes references to her EEOC complaint. Based on our thorough review of the record, we conclude that this argument is without merit. There is no indication that the ULJ was racially biased against her. We conclude that Smith received a fair hearing, and the ULJ's decision was not made upon unlawful procedure.

Affirmed.