STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0522

Robin Anderson,
Relator,

vs.

Hazelden Foundation,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 11, 2017
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 35163237-3

Robin Anderson, Otsego, Minnesota (pro se relator)

Hazelden Foundation, Center City, Minnesota (respondent employer)

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

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Schellhas, Judge.

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

HOOTEN, Judge

Relator contends that the unemployment law judge (ULJ) erred by determining that she was ineligible for unemployment benefits because she quit her employment. The ULJ concluded that relator did not provide a good reason for quitting caused by the employer, finding that relator quit because she thought she would be terminated. Relator argues that she quit because her employment was unsuitable, and that such unsuitability is a good reason for quitting caused by her employer. We affirm.

FACTS

The ULJ's findings, and the record on appeal, confirm the following facts. In May 2016, relator Robin Anderson applied for two health services tech positions with Hazelden Foundation, which were less than full time. Anderson was offered a part-time position on May 24, working overnights. She began work on June 6. During July and August, Anderson signed up to work additional shifts, which required that she provide medications to patients, but she was taken off of those shifts because she had not completed Hazelden's required training for administering patient medications. Anderson disputes the ULJ's finding that she did not complete training.

The position Anderson was hired for primarily involved drawing patients' blood and did not involve dispensing medications to patients. When Anderson met with Hazelden's clinical nurse supervisor in September for a performance review, she expressed a desire to work more hours, but the nurse supervisor told Anderson that she could not promise her more hours.

On October 24, Anderson quit her job at Hazelden because she believed that she was going to be terminated by the clinical nurse supervisor. At the hearing before the ULJ, Anderson testified that she would not have quit if she had not thought she was going to be terminated.

The ULJ found that Anderson quit because she felt that she was going to be terminated and determined that Anderson was ineligible for unemployment benefits. The ULJ also found that Anderson had not completed Hazelden's required training for administering patient medications. Anderson requested reconsideration, and submitted additional documents as part of her reconsideration request. The ULJ, after reviewing the record and Anderson's new documents, affirmed the original decision—finding that the new documents would not have changed the decision and did not tend to show that evidence submitted at the hearing was false.[1] This certiorari appeal follows.

D E C I S I O N

Anderson contends that she quit her employment for a good reason caused by her employer. She argues that by not allowing her to work the additional shifts she signed up to work, Hazelden made her employment unsuitable.

An individual who quits employment is ineligible for unemployment benefits unless the individual meets one of ten exceptions under the statute. Minn. Stat. § 268.095, subd.

[1] Anderson submitted additional documents with her appeal, some of which were not submitted to the ULJ. Any documents not submitted to the ULJ are not part of the record on appeal, and have not been considered. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) ("It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered.").

1 (Supp. 2017). One exception is quitting "because of a good reason caused by the employer." *Id.* A good reason is one: "(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.* at subd. 3(a) (Supp. 2017). But, "[n]otification of discharge in the future, including a layoff because of lack of work, is not a good reason caused by the employer for quitting." *Id.* at subd. 3(e) (Supp. 2017). By extension, an employee who quits in anticipation of being terminated does not qualify for unemployment benefits. *Erb v. Comm'r of Econ. Sec.*, 601 N.W.2d 716, 719 (Minn. App. 1999).

On a motion for reconsideration, the ULJ cannot consider evidence which was not submitted at the hearing, except for the purpose of deciding whether to order a new hearing. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2017). The ULJ is required to order another hearing if "evidence which was not submitted at the hearing: (1) would likely change the outcome . . . and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence . . . at the hearing was likely false and . . . had an effect on the outcome of the decision." *Id.*

When reviewing a ULJ's ineligibility determination, this court may affirm or remand for further proceedings, or reverse or modify if the petitioner's substantial rights might have been prejudiced because the findings, inferences, conclusion, or decision was: "(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) (Supp. 2017). "Whether an employee had good cause to quit is a question of law, which we review de novo." *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012) (quotation omitted). We view "the ULJ's factual findings in the light most favorable to the decision" and give "deference to the credibility determinations made by the ULJ." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *review denied* (Minn. Oct. 1, 2008). Thus, if the evidence substantially sustains the ULJ's factual findings, we will not disturb them. Minn. Stat. § 268.105, subd. 7(d); *Peterson*, 753 N.W.2d at 774.

Anderson challenges the ULJ's ruling that she did not quit her employment for a good reason caused by her employer. In her brief, Anderson argues that one of the two statutory exceptions regarding unsuitable employment applies to her case, and because her employment was unsuitable, that was a good reason for quitting caused by her employer.

But, the ULJ's finding that Anderson quit because she felt she was going to be terminated is substantially sustained by the evidence. In her testimony, Anderson said that she only quit because she felt she was going to be terminated. And on reconsideration, Anderson did not submit new evidence which challenged the ULJ's finding that Anderson quit solely because she felt she was going to be terminated.

Instead, Anderson argued that the nurse supervisor lied at the hearing when the supervisor said Anderson had not completed the necessary training to dispense medications to patients. But the ULJ found that the nurse supervisor's testimony was more credible—because it was firsthand, specific, and more logical—and on reconsideration the ULJ found

that Anderson had not provided new evidence or arguments that would change this finding. The documents submitted for reconsideration support that Anderson worked a training shift on July 30, but the email that refers to Anderson needing additional training was dated *after* July 30, acknowledges the July 30 training, and requests Anderson to schedule another training shift dispensing medications while another more experienced employee shadowed her. Anderson has submitted no evidence to show she completed any additional training after July 30. The ULJ found that Anderson did not complete her required training, and that the evidence Anderson submitted for reconsideration confirms, rather than challenges, that Anderson did not complete Hazelden's training to administer medications. And, Anderson does not argue that the ULJ erred by not ordering an additional hearing, which is the only issue for which the ULJ could consider the new evidence. *See* Minn. Stat. § 268.105, subd. 2(c).

Additionally, Anderson's argument that Hazelden's insistence on her completing additional training made her employment unsuitable incorrectly interprets the unemployment statute.[2] "Whether a job is suitable for an applicant is a legal question, which this court reviews de novo." *Wiley v. Robert Half Int'l, Inc.*, 834 N.W.2d 567, 569 (Minn. App. 2013). In general, suitable employment is "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." Minn. Stat.

[2] Anderson's unsuitability argument was not raised before the ULJ. However, we decide to address the issue because the record is well developed on the factual basis for Anderson's argument, the ULJ held that no other exceptions apply to Anderson, and respondent department does not argue that the issue was waived. *See Valenty v. Med. Concepts Dev., Inc.*, 503 N.W.2d 131, 133 (Minn. 1993) (recognizing that issue of suitability was not considered until case was heard by court of appeals, and deciding issue).

§ 268.035, subd. 23a(a) (2016). Employment is not suitable if: (1) the position "is vacant because of a labor dispute; (2) the wages, hours, or other conditions of employment are less favorable than those prevailing for similar employment in the labor market area; or (3) . . . the applicant would be required to join," resign from, or refrain from joining, a union. *Id.*, subd. 23a(g) (2016).

The unsuitable employment exception allows an individual receiving unemployment benefits to accept work that she is not required to accept, but still remain eligible for unemployment benefits if she quits because that work is unsuitable. This exception encourages individuals to attempt employment outside of their field and experience, enabling a quicker re-entry to the job market. *See Valenty*, 503 N.W.2d at 134. The unsuitable employment exception originated under common law. *See id.*; *see also Wiley*, 834 N.W.2d at 571 (relying on *Valenty* in interpreting unsuitable employment under the unemployment statute). In *Valenty*, the supreme court held that an individual who takes unsuitable work, and quits within a reasonable time, is still eligible for unemployment benefits. 503 N.W.2d at 134. Then, as now, an individual is ineligible for unemployment benefits if the individual fails to apply for, or accept, suitable employment. *Compare* Minn. Stat. § 268.09, subd. 2 (1992), *with* Minn. Stat. § 268.085, subds. 1(4)(5), 15, 16 (Supp. 2017). But at that time, the voluntary quit provision of the statute did not have an exception for an individual who quit unsuitable employment. Minn. Stat. § 268.09, subd. 1(c) (1992). Yet, the *Valenty* court recognized that punishing someone for accepting work they were not required to accept was contrary to the public policy rationale of the unemployment statute, and could not have been the intention of the legislature. 503 N.W.2d at 134 ("A

contrary holding would discourage those persons receiving benefits from attempting any job that was not technically 'suitable' within the statute. We view such a result as contrary to public policy.").

In light of both the language of the unsuitability exceptions, and the purpose of the exceptions within the unemployment statute, Anderson's argument is unpersuasive for several reasons. First, Anderson contends that she *is* qualified for her position, not that she is unqualified or that the job was not reasonably related to her qualifications. Second, Anderson's argument does not fit the concept of unsuitable employment. Whether employment is suitable focuses on aspects such as total compensation, "prior training, experience, length of unemployment, [and] prospects for securing employment in the applicant's customary occupation." Minn. Stat. § 268.035, subd. 23a (2016). Anderson's argument is about actions taken by her employer which she believes were adverse and caused her to quit. But that argument relates to whether Anderson quit for a good reason caused by her employer and is not an unsuitability argument.

Third, both exceptions for unsuitable employment have additional requirements that Anderson does not meet. An employee is eligible for unemployment benefits if she quit "within 30 calendar days of beginning the employment and the employment was unsuitable." Minn. Stat. § 268.095, subd. 1(3). Or, if "the employment was unsuitable and the applicant quit to enter reemployment assistance training." *Id.*, subd. 1(4). Anderson began work on June 6, and quit on October 24, which is well outside of the 30-day window. And, Anderson has never claimed that she entered reemployment assistance training after quitting.

The only statutory exception that might fit Anderson's situation is quitting because of a good reason caused by her employer. But, substantial evidence supports the ULJ's finding that the only reason Anderson quit was because she felt she was going to be terminated, and, under the statute, quitting in anticipation of termination is not a good reason caused by the employer. Thus, the ULJ did not err in determining that Anderson does not qualify for unemployment benefits.

Affirmed.