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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0601

Patricia Trelstad,
Relator,

vs.

Titan Development & Investments,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 26, 2018
Affirmed
Bjorkman, Judge

Department of Employment and Economic Development
File No. 36062445-3

Patricia Trelstad, Rochester, Minnesota (pro se relator)

Titan Development & Investments, Rochester, Minnesota (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Randall, Judge.[*]

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[*] 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UNPUBLISHED OPINION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 decision by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits, arguing that she did not quit her employment, and that even if she did quit, a statutory exception to ineligibility applies. We affirm.

FACTS

Relator Patricia Trelstad began working as an accounting clerk for respondent Titan Development & Investments on February 1, 2017. On November 14, Titan informed Trelstad that her position was being eliminated. The following day, Titan offered her a retention bonus of up to $500 if she continued to work through the end of the year. Trelstad signed the retention agreement.

After learning the position was being eliminated, Trelstad's immediate supervisor and a coworker made comments that upset Trelstad.[1] But she did not report or complain about these statements to anyone at Titan. On November 17, Trelstad advised a human-resources representative that she was no longer working for Titan.

Trelstad applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that she is ineligible because she quit her employment. Trelstad appealed DEED's ineligibility determination.

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[1] The insensitive comments exacerbated Trelstad's depression. She did not advise Titan of this condition or ask for an accommodation, nor does she contend that the medical-necessity exception to ineligibility contained in Minn. Stat. § 268.095, subd. 1(7) (Supp. 2017), applies.

A ULJ conducted a de novo evidentiary hearing. Trelstad testified, as did Titan's chief financial officer, its director of human resources, and Trelstad's immediate supervisor. The ULJ determined that Trelstad is not entitled to unemployment benefits because she quit her employment and no statutory exception to this ineligibility ground applies. Trelstad requested reconsideration, and the ULJ affirmed. Trelstad appeals by writ of certiorari.

D E C I S I O N

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision were made upon unlawful procedure, affected by legal error, or unsupported by substantial evidence in view of the record as a whole. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 665 (Minn. App. 2016) (quoting *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970)).

A person who quits employment is ineligible for unemployment benefits unless she meets a statutory exception to that ineligibility. Minn. Stat. § 268.095, subd. 1 (Supp. 2017). Whether a person quit or was discharged from employment is a question of fact. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). We view a ULJ's factual findings in the light most favorable to the decision, deferring to the ULJ's credibility determinations. *Wiley v. Robert Half Int'l, Inc.*, 834 N.W.2d 567, 569 (Minn. App. 2013). But whether a statutory exception to ineligibility applies is a question of law

that we review de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

I. Substantial evidence supports the ULJ's determination that Trelstad quit her employment.

"A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (Supp. 2017). In contrast, a discharge occurs "when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5(a) (Supp. 2017). "An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, has quit the employment." *Id.*, subd. 2(c) (Supp. 2017); *see Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 333 (Minn. App. 2009) ("[A]n employee can receive a notice of discharge and then proceed to end his employment before the discharge is effective. When this happens, the employee is considered to have quit his employment.").

The ULJ found, and substantial evidence supports, that Trelstad quit. On November 14, Titan told her that her position was being eliminated, but that she could continue to work until the end of the year. Titan confirmed this in a written document in which Trelstad agreed to continue working as an accounting clerk and Titan agreed to pay her a bonus of up to $500 if she worked through December 31. But she left on November 17.

Trelstad contends the evidence establishes that Titan, in effect, terminated her employment on November 14 by changing her duties. She asserts in her brief, "After a

long weekend of serious contemplation, I concluded that, the job had already been eliminated." This argument is defeated by Trelstad's own testimony. When the ULJ said he did not understand why November 17 was her last day, Trelstad responded, "Because during those days after they told me that I was going to be eliminated . . . they were harassing me and I couldn't continue to work there." And she further explained that she owed it to herself "to have a little bit of dignity and leave and not work for them for the next weeks listening to that."

On this record, we conclude that substantial evidence supports the ULJ's determination that Trelstad decided to end her employment on November 17. Accordingly, we turn to the question whether her reason for quitting entitles her to unemployment benefits.

II. The statutory good-cause exception to ineligibility does not apply.

A person may be eligible for unemployment benefits if she quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). A good reason caused by the employer is a reason that is directly related to the employment, is adverse to the employee, and would compel an average, reasonable worker to quit and become unemployed rather than remaining in employment. *Id.*, subd. 3(a) (Supp. 2017). Simple frustration or dissatisfaction with working conditions is not a good reason for quitting caused by the employer. *Trego v. Hennepin Cty. Family Day Care Ass'n*, 409 N.W.2d 23, 26 (Minn. App. 1987). "The standard is reasonableness as applied to the average man or woman, and not to the supersensitive." *Hein v. Precision Assocs., Inc.*, 609 N.W.2d 916, 918 (Minn. App. 2000) (quotation omitted). Whether an employee had good reason to quit

is a question of law, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Trelstad argues that she quit because she was harassed. She testified that her immediate supervisor laughingly told her "hey, don't worry about it, you can always find work in Florida." Trelstad viewed this statement, along with her supervisor's later comment, "hey, at least you're here to cover our vacations" and "I hate my job, I wish someone would take it, do you want it" as "personal attack[s]." And she explained that her coworker's response to her lost position—"wow, I can't believe they did that to you, if I were you, I'd just go get drunk, you really should just go get drunk, you know that"—was similarly upsetting.[2]

The ULJ credited Trelstad's testimony, but concluded that, "[a]lthough some of the comments were insensitive to her situation, nothing said was harassment to the extent an average, reasonable worker would be compelled to quit and become unemployed." We agree. Trelstad cites *Nichols* to support her argument that the comments directed to her would compel an average employee to quit. But *Nichols* involved derogatory obscenities and physical threats—neither of which occurred here. 720 N.W.2d at 595-96. And the harassment in *Nichols* continued for over a year. *Id.* at 592. In contrast, Titan told Trelstad

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[2] In her brief, Trelstad references other comments made by her supervisor (that Trelstad was "too nice" and "a suck up") and complains that another coworker played pranks on her and other employees (such as hiding around corners and jumping out to scare them). Trelstad did not present this evidence to the ULJ. Accordingly, we do not consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

on Tuesday that her job was being eliminated. The comments—which could be considered expressions of sympathy or support—were made during that week. Trelstad chose to leave Titan that Friday. While the statements she heard during the interim may have been unpleasant, we are not persuaded that they would compel an average, reasonable employee to quit and become unemployed rather than remain in employment.

Moreover, Trelstad did not complain about the harassment. Workplace harassment does not constitute a good reason to quit caused by the employer unless the employee complained to and gave her employer a reasonable opportunity to correct the condition. Minn. Stat. § 268.095, subd. 3(c) (Supp. 2017); *see also Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838 (Minn. App. 1987) ("'Good cause' may be established if the employee has been subjected to harassment on the job and can demonstrate that he gave his employer notice of the harassment and an opportunity to correct the problem.").

Trelstad argues that any complaint would have been futile because human resources was aware of the comments and had taken no steps to address them. This argument is unavailing. Titan's chief financial officer testified that she did not witness any harassment, and Titan's director of human resources testified that Trelstad did not report any harassment. When asked by the ULJ whether she reported the comments to human resources or a manager, Trelstad responded that she "could not" because the human-resources director, the chief financial officer, and her supervisor are "very good friends inside and outside of work and there was no way anything was gonna change." We are not convinced that Trelstad's assumptions concerning how her complaint would be received relieves her of the statutory obligation to report.

Trelstad also asserts that immediate changes to her job duties and responsibilities support a determination of good cause attributable to Titan. Trelstad explained that Titan made it sound like she would be doing the same work as usual through the end of the year, but her usual duties were disappearing. But a change in job duties alone is not sufficient to demonstrate a good reason to quit caused by the employer when the change in duties does not result in a demotion or decrease in salary. *See Williams v. Right Step Acad. (Corp)*, 607 N.W.2d 482, 485 (Minn. App. 2000) (holding that assignment of different job duties without a demotion or decrease in salary did not demonstrate a good reason to quit caused by employer). The retention agreement obligated Titan to continue Trelstad's employment through the end of 2017, and to pay her a bonus for doing so. To the extent Titan contemporaneously eliminated some of Trelstad's work duties, that change would not compel a reasonable employee to quit.

In sum, Trelstad has not persuaded us that the comments her immediate supervisor and a coworker made to her, and any change in her job duties, would compel an average, reasonable worker to quit.[3]

Affirmed.

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[3] Trelstad contends that even if this court determines she quit and no statutory exception applies, she is entitled to unemployment benefits after December 31, 2017, because that is when her employment would have ended. As she cites no supporting statute or caselaw, this argument is waived. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)). The fact that Trelstad's position was scheduled to end 44 days after she quit does not qualify her for any of the statutory exceptions under Minn. Stat. § 268.095, subd. 1.