STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1633

Raymond R. Holman,
Relator,

vs.

Two Bird Dogs, LLC, d/b/a Foxy's Bar and Grill,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 20, 2023
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 48941049-3

Raymond Holman, Park Rapids, Minnesota (pro se relator)

Zachary H. Johnson, Thomason, Swanson & Zahn, PLLC, Park Rapids, Minnesota (for respondent employer)

Lossom Allen, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Pro se relator challenges the determination of an unemployment-law judge (ULJ) that relator was ineligible for unemployment benefits because he quit his employment and did not do so for a good reason caused by his employer. We affirm.

FACTS

On June 1, 2022, respondent Two Bird Dogs, LLC, d/b/a Foxy's Bar and Grill took over operations of Foxy's Bar, which is in Park Rapids. To "assist in the transition of the business," the new owners retained relator Raymond Holman, who was the general manager of Foxy's Bar. The new owners told Holman that they intended to retain him through at least Labor Day, and possibly through the mid-November deer-hunting season. But Holman indicated to his new employer that the transition period would likely last through July 4, 2022. He also expressed concern that if he remained at Foxy's Bar much longer than July 4, his chances of finding new employment would be diminished because the bar is in a "tourist area." Ultimately, no separation date was decided.

Holman's job duties under the new ownership of Foxy's Bar included payroll, banking, scheduling, product ordering, meat raffles, cleaning the facility, mowing the lawn, and performing general maintenance. Holman also trained the new owners and new general manager on the operations of the bar. During this transition period, Holman's job responsibilities gradually decreased. But Holman's pay remained the same.

On July 15, 2022, Holman quit his employment at Foxy's Bar. Holman then applied for unemployment benefits with respondent Minnesota Department of Employment and

Economic Development (department), and the department issued an initial determination that Holman was ineligible for benefits because he quit his employment and none of the exceptions to ineligibility for quitting applied. Holman appealed that determination, and a ULJ conducted a de novo hearing.

At the hearing, Holman testified that he quit his employment at Foxy's Bar because he wanted to give himself time to find new employment and disagreed with the new owner's management of the bar. Holman explained that he received "resistance" from the new owners related to his suggestions concerning business-related issues, including Holman's disagreement over the decision to make an employee a night manager. Holman also referenced the new ownership's change to the account log-in information for a phone application that the bar used to view business data. Holman had access to the account prior to the change in ownership, but he could not access the account after the log-in information was changed. In addition, Holman complained that the new owners ordered uniforms for the bar's staff, but "did not include me in the staff uniform." And Holman testified that he was unhappy with the new manager's consistent use of the word "f*ck" in the bar.

Vanessa Gunderson, one of Foxy's Bar's new owners, testified that, around the Fourth of July weekend, Holman complained to her about the new manager's language. Gunderson told Holman that she would talk to the manager about his language. Gunderson also acknowledged renewing a business account so that the old bar owners would no longer have access to the account. Although Gunderson admitted that the account change resulted in Holman losing access to the account, she testified that she explained the situation to Holman and told him how to access the account. Gunderson further testified that all staff

members received messages regarding the new uniforms, but Holman never responded with his size information. Finally, Gunderson testified that she told Holman that, after Labor Day weekend, they would decide on Holman's separation date.

The ULJ found that Holman quit his employment because he (A) "wanted to give himself time to find new employment"; (B) "disagreed with the new owner's management of [the bar]"; and (C) "did not like how he was treated." But the ULJ found that these were not good reasons to quit caused by Holman's employer. Thus, the ULJ concluded that Holman was ineligible for unemployment benefits because Holman quit his employment and "no exceptions to ineligibility for unemployment benefits apply." Holman requested reconsideration with the ULJ, who affirmed the decision. This certiorari appeal follows.

DECISION

Holman challenges the ULJ's decision that he is ineligible for unemployment benefits. He disputes the ULJ's characterization of his reasons for quitting and argues that the ULJ erred in determining that he quit his employment and did not do so for a good reason caused by his employer. For the reasons set forth below, we disagree.

In reviewing a ULJ's eligibility decision, we may affirm the decision, remand for further proceedings, or reverse and modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2022). We review the ULJ's factual findings "in the light most favorable to the decision." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). Those findings are not disturbed "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).

An applicant is ineligible for unemployment benefits if they quit their employment unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2022). One exception occurs when an employee quits "because of a good reason caused by the employer." *Id.*, subd. 1(1).[1] To qualify as a good reason to quit caused by the employer, an applicant's reason for quitting must be: (1) "directly related to the employment and for which the employer is responsible"; (2) "adverse to the worker"; and (3) one "that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2022). If the reason for quitting is adverse working conditions, an employee must complain about the adverse conditions to the employer and give the employer a reasonable opportunity to correct the conditions before it qualifies as a good reason caused by the employer for quitting. *Id.*, subd. 3(c) (2022). Whether an employee had a good reason for quitting is a question of law reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

A. Time to find new employment

The ULJ found that Holman quit, in part, because he "wanted to give himself time to find new employment." Holman argues that this finding is "false, and not supported by

[1] Another exception arises when an employee quit because the "employer notified the applicant that the applicant was going to be laid off because of lack of work within 30 calendar days." Minn. Stat. § 268.095, subd. 1(6). The ULJ here found that "there is insufficient evidence that Holman quit within 30 calendar days of a layoff notice" because there was no "set layoff date." Holman does not challenge this determination. Moreover, the record supports the ULJ's decision that the exception contained in section 268.095, subdivision 1(6) does not apply because Gunderson testified that Holman would not be laid off until at least Labor Day, and Holman quit more than 30 days prior to that holiday weekend.

the evidence." Rather, he claims that getting an early start to find new employment was "just one of the benefits of leaving employment, not the reason for leaving."

An employee's reason for quitting is an issue of fact, and a finding of fact on that issue cannot be overturned "if the evidence reasonably tends to sustain" it. *Id.* Here, the record reflects that when the ULJ asked Holman why he quit, Holman testified that he "was trying to . . . get an early enough start in our . . . tourist season up here so that I had a scattered chance of finding another job suitable to what I had." Holman also testified that when the new owners suggested to him that he stay employed at Foxy's Bar through deer season, he replied that "if I went any later then say the ah, you know, the Fourth of July, that being a tourist area, that the odds of me being able to find reemployment diminished dramatically." And, in an "Unemployment Insurance Request for Information" form, Holman stated that he "left on the 14th of July with the hopes that I could still have enough summer/tourist season to find another job." This evidence supports the ULJ's finding that Holman quit, in part, to give himself time to find new employment.

Minnesota law states that "[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." Minn. Stat. § 268.095, subd. 3(e) (2022). Here, Holman testified that he "knew" that "when the new owners took over," his "job was gonna be short-lived," and that he only had through "deer hunting" to remain employed at Foxy's Bar. He also testified that he quit to find new employment. Thus, under Minn. Stat. § 268.095, subd. 3(e), Holman's decision to quit to find new employment was not a good reason to quit caused by his employer.

B. Management of Foxy's Bar

Next, Holman contends that the ULJ's finding that Holman quit because he was "frustrated and dissatisfied" with the management of Foxy's Bar "misinterpreted" his reason for quitting his employment. But Holman testified extensively that he disagreed with many of the decisions made by the new owners related to the bar's operations. For example, when asked by the ULJ why he quit on July 15, Holman replied:

> [M]ost of what I was bringing up was becoming more of an irritant . . . you know. Um, I . . . said that . . . making one of the gals night manager was not a really good idea because it was upsetting the rest of the crew. Well, that was what I felt my job was, but that was met with resistance. So, basically, everything that I was bringing up to their attention was . . . met with resistance. . . . [A]nd . . . they weren't being very receptive to the suggestions that I was making.

Moreover, Holman testified about an "overdue" pop bill that he paid so that the bar "could get . . . pop." He claimed that his actions were met with "scrutiny" because one of the owners later told him that she "paid that bill already" and stated "you gotta let me know this kind of stuff." And Holman testified at length that he was unhappy that the new owners allowed the new general manager to constantly use the word "f*ck" in the bar. Holman's testimony demonstrates that he was frustrated and dissatisfied with the new owners' management of Foxy's Bar, and supports the ULJ's finding that he quit, in part, for that reason.

A good reason to quit caused by an employer "does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions." *Portz v.*

Pipestone Skelgas, 397 N.W.2d 12, 14 (Minn. App. 1986). And mere dissatisfaction with a manager is not a good reason to quit caused by an employer. *Trego v. Hennepin Cnty. Family Day Care Ass'n*, 409 N.W.2d 23, 26 (Minn. App. 1987); *see also Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 697 (Minn. App. 1985) (holding that "disharmony between an executive and the employee" does not constitute good cause to quit).

Here, as the ULJ found, "[t]he totality of the record shows that Holman endured simply frustrating working conditions and not adverse working conditions." In fact, Holman acknowledged that it was not his "job to judge how they were . . . running their business." Moreover, Gunderson's request that Holman communicate with her regarding the bills that he paid was not unreasonable. Rather, it was the new owners' prerogative to request that employees communicate with them regarding aspects of the bar's operations, particularly those involving finances. Although Holman testified that his suggestions related to the operation of the bar were met with "scrutiny" and "resistance," such differences with the bar's new owners were not so adverse to compel an average, reasonable worker to quit and become unemployed rather than enduring the circumstances. *See Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (stating that whether an employee's concerns constitute a good reason to leave employment is judged by "the standard of reasonableness as applied to the average man or woman, and not to the supersensitive" (quotation omitted)).

Holman also argues that the new owners' operation of Foxy's Bar was a good reason to quit caused by his employer because the owners allowed the new manager to consistently use the word "f*ck," despite his complaints to the owners about the foul language. To

support his position, Holman relies on several cases, including *Nichols*, *Wetterhahn v. Kimm Co.*, 430 N.W.2d 4 (Minn. App. 1988), and *Tru-Stone Corp. v Gutzkow*, 400 N.W.2d 836 (Minn. App. 1987). But those cases are factually distinguishable.

In *Wetterhahn*, this court held that a coworker's frequent "temper tantrums," including yelling and profanity directed at a claimant, provided good cause to quit where the employer had notice of the harassment, but failed to take timely and appropriate measures to prevent it. 430 N.W.2d at 5-7. Similarly, in *Gutzkow*, this court held that harassment by coworkers and a supervisor constituted good reason to quit when not corrected by the employer. 400 N.W.2d at 838-39. And in *Nichols*, the relator quit her employment after her coworker swore at her at least twice in front of other employees, was "cold" to her, intentionally let doors close after him rather than hold them open for her, backed a forklift dangerously close to where she was standing, and kicked open the door of the breakroom while she was inside talking on the telephone. 720 N.W.2d at 592-93. This court determined that the relator reported each incident of harassment to her employer and her employer "failed to take appropriate affirmative steps . . . to relieve [the] relator of future improper behavior" by the coworker. *Id.* at 596. The court concluded that the coworker's actions and the employer's failure "to effectively address [the coworker's] behavior when given a reasonable opportunity to do so would have compelled an average, reasonable worker, here [the] relator, to quit." *Id.* at 597.

In this case, the ULJ found that Holman complained to Gunderson about the foul language used by the new manager, that "Gunderson talked to [the new manager] about the complaints," and that "Holman did not complain to Gunderson again about [the] language."

These findings are supported by the record. Gunderson testified that Holman complained to her about the new manager's language and that she "told him that I would talk to [the new manager], which I did talk to [the new manager] cause [he] will listen to me, obviously more than he would listen to [Holman]." And Gunderson specifically testified that Holman did not complain again to her about the language issue. Therefore, unlike in *Nichols*, *Wetterhahn*, and *Gutzkow*, Holman did not provide his employer with a reasonable opportunity to correct the problem.

Moreover, in the cases relied upon by Holman, the foul language was directed at the employee. In contrast, there is no indication that the new manager's foul language was directed at Holman or was intended to harass Holman. And it is well settled that whether an employee's concerns constitute a good reason to leave employment is judged by "the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols*, 720 N.W.2d at 597 (quotation omitted). As the ULJ found, the use of the word "'f*ck' in a bar worksite is to be expected." In fact, Holman acknowledged that one of the cooks at the bar routinely used foul language. Therefore, the ULJ did not err in determining that the new ownership's management of Foxy's Bar did not constitute a good reason to quit because, even if the new manager was permitted to use foul language on the job, his use of the word "f*ck" in a bar worksite would not likely cause an average, reasonable bar employee to quit and become unemployed.

C. Treatment

Holman further argues that his treatment by the new owners of Foxy's Bar constituted a good reason to quit. As examples of the adverse treatment, Holman

references his diminished job duties, and the new owner's decisions not to order him a uniform and to change the password to the account log-in information for a phone application that the bar used to view business data. Holman's argument is unpersuasive.

In *Marty v. Digital Equip. Corp.*, the supreme court determined that the employee was eligible for unemployment benefits when she was terminated and then offered a new position in the company that, while having the same initial salary, had a lower maximum potential salary and required substantially less skill than her prior position because the new position involved mostly clerical work. 345 N.W.2d 773, 774-75 (Minn. 1984). Similarly, in *Halbrook v. Minn. Museum of Art*, this court determined that an assistant museum curator had good reason to quit when her position was eliminated and she was then offered two half-time positions involving primarily clerical work for which she was "clearly overqualified," despite the fact that her pay would not be reduced. 405 N.W.2d 537, 538-39 (Minn. App. 1987), *rev. denied* (Minn. July 15, 1987).

Here, like *Marty* and *Halbrook*, Holman's pay remained the same when he accepted the new position at Foxy's Bar after the ownership change. Indeed, the supreme court in *Marty* recognized that "a claimant has a right to reject, without the loss of benefits, a job which requires substantially less skill than she possesses." 345 N.W.2d at 775. But unlike *Marty* and *Halbrook*, Holman testified that he accepted the position to assist in the transition of management and ownership of the bar, knowing that it was temporary and that his job duties would decrease as a result of the transition. Specifically, the ULJ asked Holman at the hearing: "so it sounds like your job duties had decreased then. Would that be accurate to say?" And Holman replied: "And, ah, rightfully so. That was the whole

intent." Although Holman testified that he was not happy to eventually be relegated to "cleaning toilets and mowing the lawn," the change in job duties was not inconsistent with his agreement to assist in the transition of the new ownership's management of the bar. In other words, the record reflects that the new owners of Foxy's Bar never altered their employment agreement with Holman.

Moreover, the new owners' treatment of Holman with respect to the uniforms and password change was not adverse to Holman and would not have compelled an average reasonable employee to quit. With respect to the uniforms, Holman testified that he received the text message related to the ordering of new uniforms, but never responded with his shirt size. And although Holman claimed that he spoke with an assistant manager about the new uniforms, he admitted that he never followed up with the new owners "because, there again, it's just a transition." Thus, Holman's own testimony indicates that the uniform issue was not a compelling reason to quit.

Finally, with respect to the password issue, Gunderson acknowledged renewing a business account so that the old bar owners "didn't have access anymore." And Gunderson admitted that the account change resulted in Holman losing access to the account. But Gunderson testified that she explained the situation to Holman and told him how to access the account. Gunderson's actions were logical and reasonable under the circumstances, and her testimony, which was not refuted by Holman, indicates no bias against Holman, and that the account change was not intended to block Holman from accessing the account. Although Holman's perceived treatment by his employer, and his frustration with his employment situation, may have provided him with good personal reasons to quit, his

reasons were not good reasons caused by his employer under the Minnesota Unemployment Insurance Law. *See Werner v. Med. Prof'ls, LLC*, 782 N.W.2d 840, 842 (Minn. App. 2010), *rev. denied* (Minn. Aug. 10, 2010) ("While an employee may have a good personal reason for quitting, it does not necessarily constitute a good reason caused by the employer for quitting."). Therefore, the ULJ did not err in concluding that Holman was ineligible for unemployment benefits.

Affirmed.