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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1306**

Jill Jensen,
Relator,

vs.

Inter Tax, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 5, 2011
Affirmed
Willis, Judge***

Minnesota Department of Employment and Economic Development
File No. 24649401-3

Jill Jensen, Plymouth, Minnesota (pro se relator)

Inter Tax, St. Louis, Missouri (respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Minge, Judge; and
Willis, Judge.

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

UNPUBLISHED OPINION

WILLIS , Judge

By writ of certiorari, Jill Jensen appeals from the determination of an unemployment-law judge that she is ineligible to receive unemployment benefits. Because Jensen did not quit for a good reason attributable to her employer or because it was medically necessary, we affirm.

FACTS

Inter Tax employed Jill Jensen as a client administrator from June 2000 through February 12, 2010. In 2009, Jensen made various complaints to Inter Tax's human-resources department, including complaints about comments a supervisor made to her, a warning that she had received, and a lack of training regarding a new product. After she made the complaints, the inappropriate comments ceased, the warning was removed from her file, and she was told to arrange training for herself with co-workers.

From October 30, 2009, until January 11, 2010, Jensen took a medical leave of absence for major depressive disorder and panic disorder. When she returned from her leave, Inter Tax accommodated Jensen's request to work 20 hours per week. But Jensen's immediate supervisor told her that the company's policy concerning work hours had changed while she was on leave, and Jensen would be required to begin work at 9:30 a.m. rather than 10:30 a.m. Jensen complained to human resources about this scheduling change, and in response, a meeting was held in which Jensen was told that the company was aligning employee hours with what it called its "core business hours" and that the change applied to all employees.

Shortly after Jensen's return, her immediate supervisor jokingly referred to her as a "loser" for being a vegetarian. Jensen complained, and human resources began an investigation. Jensen subsequently discussed the incident with her supervisor, and it was resolved by the supervisor acknowledging that the comment was inappropriate.

On February 11, 2010, Jensen received a review of her 2009 work performance and was rated as a "developing performer," which was not the lowest possible rating but did identify areas for improvement. Jensen testified that she was upset about the review, and she told her supervisor that she intended to resign. She testified that she planned to speak with human resources about the review the following week, but on February 11, she submitted her notice that she was quitting effective February 18, 2010, and on February 12, 2010, Inter Tax discharged Jensen for giving her notice of intention to quit.

Jensen applied to the Department of Employment and Economic Development for unemployment-compensation benefits but was determined to be ineligible. She appealed from this decision, and a hearing was held. At the hearing, Jensen argued that she quit because of adverse working conditions, because of the employer's failure to address her complaints, and because it was medically necessary. Two former employees testified on Jensen's behalf about the allegedly hostile working environment at Inter Tax and their reasons for quitting employment. Inter Tax offered testimony by Jensen's immediate supervisor.

The unemployment-law judge (ULJ) concluded that Jensen had quit her employment and that none of the statutory exceptions to ineligibility applies. The ULJ specifically found that Jensen did not quit employment because of a good reason caused

by Inter Tax or because of medical necessity. Jensen requested reconsideration, and the decision was affirmed. Jensen now petitions this court for review, claiming that she had a good reason to quit caused by Inter Tax and that it was medically necessary for her to quit.

D E C I S I O N

We review a ULJ's ineligibility decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision is unsupported by substantial evidence in view of the record as a whole or is affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). We view a ULJ's findings of fact in the light most favorable to the decision and will sustain them if they are supported by substantial evidence. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

An employee who quits employment is ineligible to receive unemployment-compensation benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). “[A] good reason [to quit] caused by the employer” is an exception to ineligibility. *Id.*, subd. 1(1). “A good reason caused by the employer” is a reason that directly relates to the employment and for which the employer is responsible, is adverse to the employee, and “would compel an average, reasonable worker to quit.” *Id.*, subd. 3(a)(1)-(3) (2008). The determination that an employee quit without a good reason caused by the employer is a legal conclusion, which we review de novo. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Jensen claims that she complained about adverse working conditions, and Inter Tax failed to address her complaints. *See* Minn. Stat. § 268.095, subd. 3(c) (providing that an employee must complain and give the employer a reasonable opportunity to correct an adverse condition). Substantial evidence in the record, including Jensen’s testimony, shows that Inter Tax addressed the issues that Jensen complained about. Jensen testified that in August 2009 she complained about a warning that she had received, human resources addressed the matter, and the warning was removed from her file. Jensen also testified that after she complained about derogatory comments that a supervisor made in the spring of 2009, the comments ceased. She stated that after returning from her medical leave, when she complained about her supervisor calling her a “loser,” human resources investigated her complaint, and she and the supervisor resolved the issue. Because Inter Tax corrected the conditions that Jensen complained of, they are not good reasons caused by Inter Tax for Jensen to quit her employment. *See id.*, subd. 3(a) (providing that a good reason for quitting must be adverse to the employee).

Jensen testified that Inter Tax did not address her complaints about a need for training on a new product. But she also testified that when she expressed concerns about a lack of training, her supervisor asked her to coordinate her own training with her co-workers, that in the past she had learned from co-workers through on-the-job training, and that she did receive some training. Even if, as Jensen testified, coordinating training with her co-workers was difficult, a good reason to quit does not include an employee being “simply frustrated or dissatisfied with [her] working conditions.” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). Jensen has not shown that a

difficulty in obtaining training was a condition so adverse that it “would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” Minn. Stat. § 268.095, subd. 3(a)(3).

Jensen challenges the sufficiency of two of the ULJ’s findings that relate to her claim of adverse working conditions: First, she asserts that the finding that “Jensen knew that she could talk to human resources about these concerns” is not supported by the record. But substantial evidence supports this finding. *See* Minn. Stat. § 268.105, subd. 7(d) (stating that findings of fact are sustained if supported by substantial evidence). Jensen testified that on several occasions she complained to human resources about concerns and human resources addressed her concerns; she therefore would have known that she could continue to express concerns to human resources.

Second, Jensen asserts that the record does not support the ULJ’s finding that she “did not complain to anyone before she gave her notice to quit.” The statement, however, when viewed in context, clearly relates to Jensen’s failure to complain about her performance review before quitting. *See Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that findings of fact are viewed in the light most favorable to the decision). And on reconsideration the ULJ made the specific finding, which is supported by the record, that before quitting, Jensen did not complain about the performance review. Jensen testified that she received an unfavorable performance review, gave notice later that day that she was quitting, and did not speak with anyone in human resources about the review before quitting. Because Jensen did not give Inter Tax

a reasonable opportunity to address the performance-review issue before quitting, the review was not a good reason to quit caused by Inter Tax.

Jensen next argues that her witness's testimony shows that the working conditions at Inter Tax would compel an average, reasonable employee to quit employment. She challenges the sufficiency of the ULJ's finding on reconsideration that "[e]ven though the witnesses testified that they quit because of heavy workload and lack of training, they quit several months before Jensen and their reasons did not fully correlate with Jensen." The record supports the finding. The first witness testified that she quit in November 2009, partly due to the increased workload and lack of training, but also because of a severe personal health concern and an increased commute. The second witness testified that she left Inter Tax in October 2009 because of an increased workload, a lack of training, and dissatisfaction with the working environment and direction of the company. Both quit months before Jensen and for reasons that, in part, were different from Jensen's. In contrast, Jensen quit shortly after her return from her medical leave, when she was working only 20 hours per week and had a new supervisor.

Jensen also alleges that Inter Tax retaliated against her for complaining about working conditions and taking a medical leave by changing her work schedule, giving her a "poor" performance review, and "threaten[ing her] continued employment." Jensen's claim is not supported by the record. First, testimony established that while Jensen was on medical leave, Inter Tax announced that workers would have to adjust their hours to align with what it called its "core business hours." When Jensen returned, she was told of the company-wide change and that she would have to begin at 9:30 a.m. rather than 10:30

a.m. Second, testimony showed that Jensen's performance review was based on evaluations by three managers who considered Jensen's 2009 work performance, that she received some positive feedback, that she did not receive the lowest possible rating, and that she was one of several employees who received a rating indicating there was room for improvement in some areas. Third, Jensen fails to identify any specific threat that was made about her continued employment, and the record does not show that any such threats were made. Jensen has not demonstrated that there was retaliation that was a good reason to quit her employment. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W2d 263 (Minn. 1978) (stating that an employee bears the burden of demonstrating that he voluntarily quit for good reason attributable to his employer).

Finally, Jensen claims that an "abusive" work environment and retaliation constituted a "constructive discharge." This claim is without merit. Jensen does not dispute that she voluntarily quit her employment, and she failed to show that she was subject to an "abusive" work environment or that Inter Tax retaliated against her.

Jensen also challenges the ULJ's finding that she did not quit because of medical necessity. *See Minn. Stat. § 268.095, subd. 1(7) (Supp. 2009)* (stating that an exception to ineligibility exists if an employee quits because of a serious illness or injury that makes quitting medically necessary). The ULJ's finding is supported by the record. When Jensen returned from her medical leave of absence, she requested that she be allowed to work 20 hours per week. Inter Tax permitted her to do so. She requested no further accommodation of a medical condition from Inter Tax before quitting. *See id.* (concluding that the exception applies only if the employee informs the employer of the

medical condition, requests accommodation, and the employer does not make a reasonable accommodation available).

Because Jensen has failed to demonstrate that she quit for a good reason caused by Inter Tax or because it was medically necessary, we determine that the ULJ did not err by concluding that Jensen is ineligible to receive unemployment-compensation benefits.

Affirmed.