STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1318

Joni Quam,
Relator,

vs.

Farmington Health Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 3, 2011
Affirmed
Shumaker, Judge

Department of Employment and Economic Development
File No. 24297477-3

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Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Halbrooks, Judge.

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

SHUMAKER, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that she is ineligible for unemployment-compensation benefits because she quit employment without a good reason caused by her employer. Relator contends she did not quit but that, if she did, she quit for a good reason caused by her employer. We affirm.

FACTS

Relator Joni Quam worked for Farmington Health Services (FHS), a nursing home, from August 2007 until January 2010. In April 2009, Quam began complaining to FHS administrator Rich Ludwig of breathing problems, flu-like symptoms, itchy and watery eyes, headaches, and rashes, saying she suspected mold was to blame.

Ludwig covered all the vents in Quam's office so that no air blew in and purchased a HEPA-style air-filtration system for the office. He researched mold on the Minnesota Department of Health (MDH) website and held meetings with employees regarding mold. He and an FHS safety officer inspected the facility, including air flow, all air-handling equipment, duct work, spaces above ceiling tiles, vents, etc., to search for signs of mold. He gave employees HEPA filter masks to wear. He scheduled a third-party mold inspection, which yielded evidence of mold, and undertook the recommended remediation. When the Occupational Safety and Health Administration (OSHA) forwarded a complaint of mold to Ludwig, he responded with a three-page letter outlining what FHS had done to address the complaint, following up with a call to see if there was any more FHS could do. When Quam requested that her office be relocated, Ludwig

gave her a choice of where to relocate. He scheduled interviews with approximately 90 percent of Quam's department to see if anyone else was concerned with mold, and discovered that no other employee had mold concerns at the FHS facility. When Quam requested a blood test for mold, FHS's worker's compensation carrier set up and paid for the test.

Quam continued to complain of health issues and told Ludwig she did not know whether "[FHS] was the right place for her." She began a 12-week Family and Medical Leave Act (FMLA) leave on October 1, 2009, after Ludwig told her that further scheduled testing had been cancelled because FHS could not afford to fix a mold problem. On November 24, 2009, Quam consulted a physician who instructed her to "[a]void exposure to high levels of mold unless it is cleaned up." On December 16, 2009, Quam visited another physician who reported that Quam "experiences chest pain and cough with mold exposure and must avoid such exposure for the indefinite future."

When Quam's FMLA leave was set to expire, Ludwig wrote to her that FHS had been unable to confirm "high levels of mold" in the work environment and "where the mold is and how it can be abated." Ludwig did not order her to return to work at that time because FHS could not satisfy her accommodations. However, when Ludwig received an outside testing company's report of normal levels of mold in the facility, he wrote Quam that testing had confirmed that there were no high or unsafe levels of mold in the facility and that the recommended remediation had been completed. He stated that FHS expected Quam back at work one day after receipt of the letter, and that, if she did not return, her absence would be "handled according to company policy." Quam testified

that when she read this letter on January 8, 2010, she "had no proof or documentation" that FHS had remedied the mold problem. She feared that if she returned to work and there was still mold, she would be ill and would be fired because she had no remaining sick time. She emailed Ludwig and stated that any matters regarding her employment were to be addressed to her attorney. She then applied for unemployment-compensation benefits.

On January 13, 2010, Ludwig wrote to Quam and told her that FHS considered her to have abandoned her position pursuant to the employee handbook and was therefore terminating her employment. The relevant portion of the employee handbook, which was attached to the letter, defined "abandonment of position" as "failure to report to work for two (2) days, without notifying [her] Supervisor," resulting in removal from the payroll.

The Department of Employment and Economic Development (DEED) issued an initial determination of ineligibility, finding that Quam had been discharged for employment misconduct. Quam appealed the determination and had a hearing before a ULJ. The ULJ affirmed, stating that "[FHS] directed Quam to return to work on January 9th. Quam did not return to work on or after January 9th, nor did she contact [FHS] to report her absence . . . . The decision to end the employment relationship on that date was made by Quam." The ULJ concluded that Quam quit her job but not for a good reason caused by her employer because she did not give her employer "a reasonable opportunity to correct the problem." Quam requested reconsideration, and the ULJ affirmed. Quam now appeals.

D E C I S I O N

Standard of Review

This court may reverse or modify the ULJ's decision if it is affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2010). This court defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Quit or Discharged

The first issue is whether Quam quit her employment or was discharged, which is a question of fact. *See Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). We review the ULJ's findings of fact "in the light most favorable to the decision" and will affirm a finding if it is supported by substantial evidence. *Skarhus*, 721 N.W.2d at 344. If an administrative agency engages in reasoned decision-making, we will affirm, even if we may have reached a different conclusion had we been the fact-finder. *First Nat'l Bank of Long Prairie v. Dep't of Commerce*, 350 N.W.2d 363, 368 (Minn. 1984).

Quam contends she was discharged from employment. The ULJ concluded that Quam was not discharged but that she quit. 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." Minn. Stat. § 268.095, subd. 5 (2008). Ludwig's January 7 letter to Quam states: "We look forward to your return to work one day after receipt of this letter." Further, Quam concedes in her brief that she "believe[d] she would still be employed even if she did not return to work

as ordered." There is substantial evidence to support the ULJ's determination that Quam was not discharged from 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. 2009). The ULJ concluded that: "The decision to end the employment relationship . . . was made by Quam." Quam testified at her hearing that "if [FHS] would have been a safe place for me to go back and return to, yes, I would have returned back to work." Also, Quam did not believe she would be discharged for not returning to work as ordered. Finally, Quam applied for unemployment-compensation benefits prior to FHS's January 13 letter informing her that she had abandoned her position. Her application stated, "for my safety and occupational related health issues I did not return to work."

Whether the termination of employment is voluntary is a fact question. *Larson v. Pelican Lake Nursing Home*, 353 N.W.2d 647, 648 (Minn. App. 1984). It is determined "not by the immediate cause or motive for the act but by whether the employee directly or indirectly exercised a free-will choice and control as to the performance or nonperformance of the act." *Anson v. Fisher Amusement Corp.*, 254 Minn. 93, 98 N.W.2d 815, 819 (1958). Quam contends she was compelled to quit and cites *Ferguson* as support. *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 247 N.W.2d 895 (1976). But Ferguson showed up for work and was discharged, whereas Quam never came to work when she was clearly directed to do so. *See id.* at 36, 247 N.W.2d at 896. Quam has conceded she did not return to work because of safety- and occupational-related

health issues, so there is substantial evidence in the record to support the ULJ's determination that Quam quit.

Quit for Good Reason Caused by Employer

Absent a statutorily provided exception, a person who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). The ULJ deemed that the most relevant statutory exception to Quam's decision to quit was for a good reason caused by her employer. *See id.*, subd. 1(1). The ULJ concluded that Quam did not quit for a good reason caused by her employer.

"The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). We review questions of law de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). An applicant who quits employment is ineligible for unemployment benefits except, in relevant part, when quitting employment for a good reason caused by her employer. Minn. Stat. § 268.095, subd. 1(1). Such a 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." Minn. Stat. § 268.095, subd. 3(a) (2010).

Compelled to Quit

It is undisputed that Quam experienced adverse working conditions related to her employment and that she gave FHS a reasonable opportunity to correct them. What is in dispute is whether an average, reasonable employee would have felt compelled to quit under these circumstances. To compel is "[t]o cause or bring about by force, threats, or overwhelming pressure." *Black's Law Dictionary* 321 (9th ed. 2009). As the supreme court explained, "[i]n order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson*, 311 Minn. at 44 n.5, 247 N.W.2d at 900 n.5. Quam's allegations are real and substantial—she testified to significant adverse reactions to mold in the FHS facility, corroborated by doctors' reports. However, Ludwig informed Quam in his January 7 letter that the mold issues had been resolved and that he expected Quam back at work. Quam failed to verify Ludwig's statements. She could have requested the results of the tests and forwarded the results to her doctor, or informed Ludwig that she still had concerns about mold, or requested more time off. Instead, Quam applied for unemployment-compensation benefits and directed Ludwig to contact her attorney. The ULJ concluded that Ludwig was more credible than Quam, a determination to which we now defer. *See Skarhus*, 721 N.W.2d at 345 ("Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.").

Complain of Adverse Conditions

"If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(c) (2010). The ULJ found that

> [Quam did not] request that [FHS] provide her with evidence to support Ludwig's assertion [that there were no unsafe levels of mold]. Her failure to do so deprived [FHS] of an opportunity to address her misgivings, which is a prerequisite for a finding of a good reason caused by the employer for quitting.

When Quam received Ludwig's January 7 letter directing her to return to work one day later or face consequences, instead of requesting corroboration of Ludwig's statement that the mold problem had been remedied, Quam directed Ludwig to contact her attorney. Quam did not indicate whether she would return to work, and she did not contact Ludwig to determine how her absence would be interpreted. As such, there is substantial evidence in the record to support the ULJ's finding that Quam deprived FHS of the opportunity to address the adverse conditions of which Quam had previously complained.

Abandonment of Position

Quam contends FHS improperly considered her two absences as abandonment of her position, which FHS defines as "failure to report to work for two (2) days, without notifying [a] Supervisor," which "will cause employee to be removed from the payroll."

The ULJ did not address this issue, but Quam's two absences without notification clearly fall within FHS's definition of "abandonment of position."

Minnesota Department of Health Report

Quam contends the ULJ improperly relied on a report issued by MDH after her employment was terminated, contending it cannot be used to support a conclusion that FHS properly responded to her complaints. Even without this report, there is substantial evidence to support the ULJ's conclusion that FHS adequately responded to Quam's complaints. FHS purchased a HEPA filter for Quam's office and HEPA masks for employees to wear, relocated Quam's office, inspected the facility for mold, interviewed employees to determine if anyone else was suffering, responded to OSHA's notification that a complaint had been filed, responded to MDH's report and recommendations, hired an outside agency to test for mold, and proactively communicated with Quam, keeping her apprised of FHS's progress in remedying the mold problem. This report is not dispositive of whether FHS properly responded to Quam's complaints, and if the ULJ erred in relying on it, the error was harmless and does not affect the outcome of the case. Where the findings necessary for a legal conclusion are adequately supported, a court's inclusion of other unsupported findings is harmless error. *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979).

Affirmed.