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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1785**

Jeri Wahlstrom,
Relator,

vs.

Amara Incorporated, d/b/a Mississippi Belle,
Respondent,

Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 25407463-3

Jeri A. Wahlstrom, Hastings, Minnesota (pro se relator)

Amara Incorporated - Mississippi Belle, Mendota Heights, Minnesota (respondent)

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

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she quit without good reason caused by the employer. Relator argues she had good reason to quit because the employer engaged in illegal or unethical actions and harassment by (1) failing to address problems with relator's paycheck and by not paying her minimum wage; (2) repeatedly allowing illegal sales of wine; (3) failing to correct unsanitary conditions; (4) allowing sexual and inappropriate comments and behavior by coworkers; and (5) engaging in verbal and written abuse and harassment. Additionally, relator claims that the ULJ erred in denying her request for reconsideration despite evidence that respondent-employer gave false testimony at the de novo hearing and provided false evidence to the ULJ. We affirm.

FACTS

Relator Jeri Wahlstrom worked as a part-time server for respondent-employer Amara Incorporated, d/b/a Mississippi Belle, from December 26, 2006, until May 22, 2010. She worked approximately ten hours per week, earning \$6.50 per hour, plus tips. When relator's performance began declining, several of her coworkers complained to co-owner Hope Kopp about relator's poor attitude and her unfriendliness towards patrons. Relator complained to Kopp that two other servers never asked her to work for them, which deprived her of opportunities to work at banquets and earn extra money.

In January 2010, relator started to save copies of her timecards, suspecting that her paychecks did not accurately reflect the hours she worked. Because of problems with

Mississippi Belle's bank account, at the end of March 2010, the restaurant's payroll service, ADP, was unable to process the payroll. During this time, Kopp personally paid employees, and consulted with ADP about how to calculate employee deductions. Relator did not receive earnings statements with her checks when she was paid by Kopp personally. On May 1, 2010, relator complained to Kopp about the amount of one of her paychecks from February. Kopp told relator she would have ADP look into the matter.

Relator also documented what she claimed were unsanitary conditions in the restaurant, and she contacted public-health officials to investigate. After an inspection, health officials found no serious violations. Relator was also unhappy because she believed the restaurant was illegally serving wine; because the chef used profanity and made sexually explicit remarks; and because her coworkers referred to her "Ms. OCD" (obsessive-compulsive disorder).

On May 21, 2010, a table of four assigned to relator received particularly poor service. An off-duty coworker stepped in to serve the table after it was ignored by relator. This was particularly significant because at the time, Kopp was interviewing for a managerial position at a national restaurant chain, and one of the table's diners was the general manager hiring for that position; and, when he met with Kopp the following day for her interview, he complained about his unsatisfactory experience at Mississippi Belle due to relator's poor service. Kopp discussed the matter with relator, who acknowledged her poor service but made excuses for it. Kopp told relator that she would be written up for the incident. When Kopp went to the restaurant to deliver the written reprimand,

relator had left before her shift ended. Relator called the restaurant the day before her next scheduled shift to notify Kopp that she quit.

Relator applied for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED). A DEED adjudicator determined relator was ineligible for unemployment benefits because she did not quit for good reason caused by her employer. Relator appealed the determination. After a de novo hearing, the ULJ issued a decision finding that relator quit because she had been harshly reprimanded by her employer for her poor performance and that this was not a good reason caused by the employer for quitting employment. Relator filed a request for reconsideration. The ULJ issued an order affirming on reconsideration, and relator filed this timely certiorari appeal.

D E C I S I O N

This court may affirm, or remand, reverse, or modify the decision of a ULJ if the substantial rights of the relator may have been prejudiced because the findings, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). “An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law.” *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010). We view the ULJ’s findings in the light most favorable to the decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni’s, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

I.

An individual who quits employment is ineligible for unemployment benefits pursuant to Minn. Stat. § 268.095, subd. 1 (2010), unless one of ten enumerated exceptions is met. Relator claims eligibility under the exception for an individual who quits for a good reason caused by the employer. See Minn. Stat. § 268.095, subd. 1(1). A good reason caused by the employer for quitting is defined as a reason that is directly related to the employment, for which the employer is responsible; that is adverse to the worker; and that would compel an average, reasonable worker to quit and become unemployed. *Id.*, subd. 3(a)(1)-(3) (2010). “Whether an employee had good cause to quit is a question of law, which we review de novo.” *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005). “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).

Relator argues she had good reason to quit employment because her employer engaged in illegal or unethical actions and harassment by (1) failing to address problems with relator’s paycheck and by not paying her minimum wage; (2) repeatedly allowing illegal sales of wine; (3) failing to correct unsanitary conditions; (4) allowing sexual and inappropriate comments and behavior by coworkers; and (5) engaging in verbal and written abuse and harassment. The ULJ found that relator did not quit for any of the reasons she now claims, instead finding that she quit because she was reprimanded for poor service.

Paychecks

Relator claims one reason she quit was because of problems with her paychecks. Specifically, relator contends that she did not receive check stubs with some of her paychecks; her employer did not pay her for all the hours she worked; and her employer did not pay her minimum wage.

Before adverse working conditions may be considered a good reason caused by the employer for quitting, an employee subjected to such conditions must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions. Minn. Stat. § 268.095, subd. 3(c) (2010). There is conflicting testimony as to whether or not relator told her employer about her paycheck stub concerns. Relator testified that she confronted Mississippi Belle's owners about not receiving some of her paycheck stubs but that they told her they did not have check stubs to give her. Co-owner Hope Kopp testified that relator never raised this issue with her.

We defer to the ULJ's credibility determinations and evaluations of conflicting evidence. *Nichols*, 720 N.W.2d at 594. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2010). The ULJ found that because relator's testimony was self-serving and provided "a less logical or probable sequence of events," Kopp's testimony was more

credible. This determination is also supported by the evidence, therefore we will not disturb it on appeal.

Relator also contends that she was not being paid for all the hours she worked. It is undisputed that relator complained to Mississippi Belle's owners on May 1, 2010, about her concern that some of her paychecks did not accurately reflect the hours she worked. Relator claims that the owners did not indicate they would remedy the situation. Hope Kopp testified that she told relator she would contact the restaurant's payroll service in response to the complaint. However, relator quit three weeks later. The ULJ determined relator "quit before Kopp could investigate this matter," and therefore "did not give management a reasonable opportunity to address these concerns," as is required by Minn. Stat. § 268.095, subd. 3(c).

The ULJ did not err in concluding that problems with relator's paycheck did not constitute a good reason to quit caused by the employer. Relator either failed to complain about her concerns over her paychecks, or did complain but did not allow her employer a reasonable opportunity for remedy. Relator's argument that she quit because she did not receive minimum wage is also without merit. She testified that she did not complain about this to her employer because she was unaware of it until after she quit. Accordingly, it could not have been a reason she quit her job.

Illegal wine sales

Because there were price tags on some wine bottles at the restaurant, relator suspected the wine "was brought in illegally" by her employer. An employer's illegal conduct may constitute good cause for an employee to quit. *Hawthorne v. Universal*

Studios, Inc., 432 N.W.2d 759, 762 (Minn. App. 1988). However, there is no evidence of illegal conduct by the employer in this case. Price tags on wine bottles, without evidence of any wrongdoing by the employer, is not a good reason to quit employment. See Minn. Stat. § 268.095, subd. 3(g) (2010) (“The definition of a good reason caused by the employer for quitting employment provided by this subdivision is exclusive and no other definition applies.”).

Unsanitary working conditions

Relator also contends she quit due to unsanitary conditions in the restaurant. At the de novo hearing, she submitted pictures of spoiled and moldy unidentified food, the restaurant’s kitchen floor, and a wine bottle. She testified that when she showed Mississippi Belle’s owners spoiled food they would tell her to throw it away. She also testified about two different days when “the air quality was horrible”—one day when the sewer system was malfunctioning and once when the hoods in the kitchen were not working properly. Relator alleged other unsanitary conditions, such as Kopp occasionally wearing open-toed shoes to the restaurant, but she never spoke with her employer about these concerns. She did, however, alert public-health officials to what she thought were unsanitary conditions. The ULJ found that public-health officials inspected the restaurant and did not find any significant health violations.

“In 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 v. Dep’t of Emp’t Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976).

As the ULJ noted, at a restaurant “there are going to be occasions when food spoils or gets moldy or old.” And the two days when “the air quality was horrible” were not alleged to be the employer’s fault and do not appear to be anything other than examples of minor complications restaurants commonly face. Moreover, public-health officials—prompted by relator—did not find any significant health violations after an investigation. The conditions relator described would not compel an average, reasonable worker to become unemployed and did not give relator good reason to quit her job.

Sexual harassment

Sexual harassment is another reason for which relator claims to have quit her job. In particular, she alleged that the restaurant’s cook made inappropriate sexual comments to her. One of relator’s former coworkers testified that Mississippi Belle’s cook frequently cussed and made sexual comments, and she asserted that the employer was aware of the cook’s behavior. Both the former coworker and relator admitted that they had never complained about this issue to the employer. The only specific example relator provided was that one day in the fall of 2008, Kopp fussed with buttons on relator’s shirt in front of a male cook to determine which button openings might yield more tips. Although she had a shirt on underneath, relator testified that she was uncomfortable. Kopp testified that she never heard the cook make inappropriate sexual comments to relator, and denied ever unbuttoning relator’s shirt.

An individual “has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action.” Minn. Stat. § 268.095, subd. 3(f) (2010). “Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature” that: (1) is made a term or condition of the employment; (2) is the basis for decisions affecting employment; or (3) has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment. *Id.*

Relator has not supported her sexual-harassment claims with any evidence. With the exception of her brief description of an interaction with Kopp, relator failed to articulate what the restaurant’s cook did or said that offended her. Without evidence or more specific allegations, it is impossible to determine whether sexual harassment occurred in a way prohibited by Minn. Stat. § 268.095, subd. 3(f). Further, Kopp testified she did not know about the alleged harassment. Although relator and her former coworker testified that the employer was aware of the sexual harassment, both admitted they never complained about it to the employer. Because there is no evidence of sexual harassment, relator has not established that sexual harassment was the reason she quit.

Harassment

Finally, relator claimed she quit due to harassment. This claim is based on relator’s coworkers calling her “OCD”—short for obsessive-compulsive disorder. Relator provided the ULJ with copies of birthday cards she received from her coworkers

referring to her as “OCD,” and testified that Kopp referred to her as “OCD” on occasion, in front of other employees. Kopp admitted that she called relator “Ms. OCD” but claimed relator laughed about it, knew it was a joke, and never indicated it bothered her. Because relator did not complain to her employer about this, it does not constitute a good reason caused by her employer to quit. *See id.*, subd. 3(c).

Reprimand

The ULJ was persuaded by a preponderance of the evidence that relator did not quit for the reasons previously discussed, rather, she quit “as a result of a counseling that she received on May 22, 2010, regarding poor service she gave a customer on the previous night.” The ULJ also found that the reprimand relator received did not give her a good reason to quit. *See id.*, subd. 3(d) (2010) (“A reason for quitting employment is not considered a good reason caused by the employer for quitting if the reason for quitting occurred because of the applicant’s employment misconduct.”). The ULJ’s decision is supported by Kopp’s testimony that relator quit because she was reprimanded for the poor service she provided.

We defer to the ULJ’s evaluations of conflicting evidence and credibility determinations. *Nichols*, 720 N.W.2d at 594. Relator claimed she quit for reasons that did not include being reprimanded on May 22, 2010, while her employer argued relator quit because of the reprimand. The ULJ found Kopp’s testimony to be more credible than relator’s testimony. The ULJ also explained its credibility determination, pursuant to Minn. Stat. § 268.105, subd. 1(c), stating that relator’s testimony was self-serving and

provided a less logical or probable sequence of events. The evidence also supported this conclusion.

Furthermore, whether relator quit for the reasons she provided or due to the reprimand by her employer is unimportant because none of these reasons constitute a good reason to quit caused by the employer. The ULJ held that “[t]he evidence simply does not support a finding that [relator] was treated so egregiously by this employer as to give her good reason caused by the employer to quit.” And, as the ULJ noted, for the most part, relator did not raise her concerns with her employer before quitting, which is required in order to be eligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 3(c). As a result, we affirm the ULJ’s decision that relator is ineligible for unemployment benefits because she quit employment without good reason caused by her employer and no other exceptions to ineligibility apply.

II.

In her request for reconsideration and on appeal to this court, relator also argues that Hope Kopp testified falsely at the de novo hearing and submitted false evidence. Relator does not provide any evidence to support her allegations. Relator’s requested relief appears to be a reversal of the ULJ’s decision. Typically, when a relator argues that evidence presented at an evidentiary hearing was false, the standard relief, if any is required, is an additional evidentiary hearing—not an outright reversal. *See* Minn. Stat. § 268.105, subd. 2(c) (2010) (stating an additional evidentiary hearing is required if the additional evidence would show evidence submitted at the de novo hearing was likely false and had an effect on the outcome of the decision). The ULJ is only required to

order an additional evidentiary hearing if the relator provides new evidence that was not submitted at the evidentiary hearing, to support the claim of false testimony or evidence. *Id.*

In the instant case, relator offered no new evidence. Relator claims Kopp knew about the inappropriate sexual comments the cook made, and that Kopp testified falsely that she was not aware of this behavior. But relator made the same assertion at the evidentiary hearing, where the ULJ found Kopp to be more credible than relator. Relator also claims Kopp submitted a false warning letter into evidence. But this letter is not in the record and the ULJ does not reference the letter in the findings or decision. Because relator did not provide any evidence in support of her request for reconsideration, the ULJ was not required to order an additional evidentiary hearing and did not err by affirming the original decision on reconsideration.

Affirmed.