**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-372**

Kaarin Erickson,
Relator,

vs.

Concert Group Logistics, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed November 28, 2011**
**Affirmed**
**Stoneburner, Judge**

Department of Employment and Economic Development
File No. 26071945-3

Kaarin Erickson, Bloomington, Minnesota (pro se relator)

Concert Group Logistics, Inc., San Dimas, California (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

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

**STONEBURNER**, Judge

Relator challenges the unemployment law judge's (ULJ) determination that relator is ineligible to receive unemployment benefits because she quit her employment without

a good reason attributable to her employer, she did not quit because the employment was unsuitable, and no other exception to ineligibility applies. Relator also argues that the Minnesota Department of Employment and Economic Development (DEED) did not resolve her eligibility in a timely manner. We affirm.

## FACTS

Relator Kaarin Erickson was hired by Concert Group Logistics, Inc. as a freight agent starting October 8, 2009. After one day on the job, Erickson resigned by leaving a voicemail message with Juan Cocco, an export manager whom she had job-shadowed on October 8. Erickson expressed no concerns about the employment to Cocco before she resigned and did not advise Cocco of her reasons for resigning.

On September 28, 2010, a DEED adjudicator determined that Erickson was ineligible for unemployment benefits beginning October 4, 2009, the week of her employment with Concert Group Logistics, because Erickson had quit her employment without a good reason caused by her employer. Erickson appealed.

During a telephone hearing, Erickson explained that she quit because she felt that her employment with Concert Group Logistics was "not a good fit" and she was not "comfortable in the job," because (1) she learned for the first time on October 8 that her duties would include making collection calls; (2) she learned that a third-party company handled human-resources matters for Concert Group Logistics, which made her concerned about protection of her personal data; (3) she was not informed when to take a lunch break; and (4) her job responsibilities were not clearly explained.

The ULJ determined that Erickson is ineligible for unemployment benefits because she quit her employment without a good reason caused by her employer, she did not quit because the employment was unsuitable, and no other exception to ineligibility applied. Erickson sought reconsideration and, on January 25, 2011, the ULJ affirmed the ineligibility determination. This certiorari appeal followed.

## D E C I S I O N

### I. Ineligibility due to voluntary quit

We review a ULJ's decision to determine whether the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010).

The ULJ's factual findings are reviewed in the light most favorable to the decision. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). We will not disturb factual findings on appeal if there is evidence that substantially tends to sustain those findings. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the findings establish that a statutory exception to ineligibility applies presents a question of law, which we review de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

Generally, a person who quits her employment is ineligible to receive unemployment benefits, but there are several statutory exceptions to this rule. Minn.

Stat. § 268.095, subd. 1 (2010). The ULJ considered two of these exceptions: an applicant who quits because of good reason caused by her employer, *id.*, subd. 1(1), and an applicant who quits within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant, *id.*, subd. 1(3). The ULJ concluded that neither exception applies in this case.

A "good reason caused by the employer for quitting" is a reason that (1) is directly related to the employment and for which the employer is responsible; (2) is adverse to the worker; and (3) "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2010). A good reason caused by the employer to quit exists when working conditions combine to create "unreasonable demands of [the] employee that no one person could be expected to meet." *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn.1978). "The test for whether there was good cause attributable to the employer . . . is whether the reason for quitting is compelling, real and not imaginary, substantial and not trifling, reasonable and not whimsical and capricious." *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 897 (Minn. App. 1993). "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 credible Erickson's testimony that she was not previously advised that her job duties would include collection calls, but, based on evidence that this duty

was a minimal part of the job, the ULJ found that the duty was not such an adverse change in the agreed-upon conditions of employment as would compel the average, reasonable worker to quit and become unemployed rather than remaining in the employment. The record supports this finding. Erickson observed Cocco make one collection call and Cocco testified that collection calls were a small part of Erickson's job responsibilities.

The ULJ also found that Erickson's concerns about the third-party company's management of human-resources matters were speculative and would not compel the average, reasonable worker to quit and become unemployed rather than remaining in the employment. The record supports these findings. Erickson did not present any evidence supporting her confidentiality concern.

On reconsideration, the ULJ also addressed Erickson's assertions that she quit because she was not given a lunch or other break and she did not believe that her employer was complying with TSA regulations. The ULJ found that Erickson did not inquire about breaks or report this concern to her employer before she quit, and there is no evidence that working without breaks was a condition of employment. These findings are supported by the record.

An employee's frustration or dissatisfaction with her job or working conditions does not amount to a good reason caused by the employer to quit. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). And even if an average, reasonable employer would quit her job for the reasons Erickson identified, the employee "must complain to the employer and give the employer a reasonable opportunity to correct the

adverse working conditions" before the reason can be attributed to the employer. Minn. Stat. § 268.095, subd. 3(c). Erickson conceded that she raised none of her concerns to Concert Group Logistics before she quit. Concert Group Logistics was not given an opportunity to address the allegedly adverse working conditions. Accordingly, the ULJ did not err by concluding that Erickson did not have a good reason to quit caused by Concert Group Logistics.

Erickson testified that she quit Concert Group Logistics because the company was not "a good fit." She testified that "[y]ou just get a feeling about certain companies and this was one I did not feel comfortable with." An employee who quits may be eligible for unemployment benefits if "the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant." Minn. Stat. § 268.095, subd. 1(3). "Suitable employment" means "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." Minn. Stat. § 268.035, subd. 23a (2010). Relevant considerations to determining whether employment is suitable include the degree of risk involved to health and safety, physical fitness, prior training, experience, length of employment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence. *Id.*

The ULJ found, and the record reflects, that until the month before she began working for Concert Group Logistics, Erickson was employed for two and one-half years as an export manager by another freight logistics company, where she worked full time and earned an annual salary of $48,000. The ULJ found, and the record reflects, that

Concert Group Logistics is an air freight company, Erickson's position was a full-time position as a freight agent earning an annual salary of $40,000. The record also reflects that Erickson worked in the freight industry for 25 years.

The ULJ also found that, with the exception of supervisory duties, Erickson's duties in her previous position were similar to those expected of her at Concert Group Logistics. This finding is supported by the record and Erickson did not present evidence that the elements of the job that made it "not a good fit" for her were related to her qualifications, experience, or training, or any other factor relevant to determining suitability. *See* Minn. Stat. § 268.035, subd. 23a. Erickson did not testify and does not argue on appeal that the lower salary and lack of supervisory responsibilities were reasons for concluding that employment with Concert Group Logistics was not a "good fit." The record supports the ULJ's conclusion that Erickson failed to satisfy the requirements of the exception to ineligibility for unsuitable employment.

## II. Challenge to timeliness of ineligibility determination

Erickson challenges the requirement that she repay unemployment benefits she received before the determination of ineligibility, arguing that DEED's ineligibility determination was untimely, unfairly resulting in a significant overpayment of $21,761.[1] Erickson asserts that she reported her resignation to DEED in her application for

[1] If DEED determines that a person is ineligible for unemployment benefits, any benefit amounts previously paid constitute an overpayment. Minn. Stat. § 268.105, subd. 3a(b) (2010). An employee who has received an overpayment must "promptly repay the unemployment benefits." Minn. Stat. § 268.18, subd. 1(a) (2010).

continued unemployment benefits the week after she resigned from Concert Group Logistics.

The record reflects that Erickson first raised a concern with the timeliness of DEED's ineligibility determination after the ULJ adjourned the telephonic hearing, when she asked the ULJ "[c]an you tell me why they can take so long to make this determination when I followed suit the next week and told them I had worked a day?" The ULJ responded "I couldn't explain how it was that it was not noted that you had quit employment after working one day. I don't know if that was reported by you or I don't know if it was reported and not noticed by someone." Erickson followed up by asking "[i]s there a law that gives [the state] a timeframe [to make these determinations]?" The ULJ identified the relevant statute and ended the telephonic hearing. In her request for reconsideration, Erickson asserted that the length of time it took for DEED to determine that she was ineligible and the overpayment that resulted unfairly imposes a financial burden on her. In his reconsideration decision, the ULJ noted that a determination of eligibility may be issued within 24 months of the establishment of the benefit account, but did not otherwise address the timeliness issue.

A reviewing court generally will not consider matters that were not presented and considered in the court below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 512 (Minn. App. 1997). But even if we were to conclude that the issue was properly raised, DEED "may issue a determination on an issue of ineligibility at any time within 24 months from the establishment of a benefit account based upon information from any source, even if

the issue of ineligibility was not raised by the applicant or an employer." Minn. Stat. § 268.101, subd. 2(e) (2010). The ULJ identified this statute at the end of the hearing and Erickson makes no claim that the determination was made more than 24 months after she established her unemployment benefits account.

In its brief on appeal, DEED, expressing sympathy for the accrual of the large overpayment, asserts a combination of reporting error by Erickson, the effect of the federal extension of benefits, and human error by DEED to explain the lengthy delay in the ineligibility determination. But the explanation is based on documents not in the record. Nonetheless, because there is no evidence that the determination was made beyond the statutory limitation, Erickson has not established that she is entitled to relief for the delay.

**Affirmed.**