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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2109**

Ingeborg S. Black,
Relator,

vs.

Tyco Integrated Security LLC,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2013
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 30046791-3

Ingeborg S. Black, White Bear Lake, Minnesota (pro se relator)

Tyco Integrated Security, L.L.C., Columbus, Ohio (respondent Tyco)

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

Considered and decided by Stauber, Presiding Judge; Hudson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

This is a certiorari appeal from an unemployment law judge's (ULJ) decision that relator is ineligible for unemployment benefits because she does not fall within one of the statutory exceptions for quitting employment. Relator argues that the ULJ's decision is erroneous because (1) she quit for good reason caused by her employer and (2) her circumstances fall within the quit-for-a-better-job exception contemplated by Minn. Stat. § 268.095, subd. 1(2) (2012). We affirm.

FACTS

In September 2011, relator Ingeborg S. Black began employment with Tyco Integrated Security (Tyco) as a full-time commission-only sales representative. Relator knew that the position was commission only when she began her employment, and during her three months of employment, relator earned approximately \$1,000 per month.

In December 2011, relator interviewed for a position at Macy's paying \$10.00 per hour. According to relator, she was offered a job at the Macy's in Roseville on December 15, 2011, but was never given a start date. Relator then gave notice to Tyco on December 18, that January 3, 2012 would be her last day. When relator provided her notice, relator's employment was terminated immediately pursuant to Tyco's policy.

While relator was still employed with Tyco, but after she was purportedly offered a job at Macy's, the manager of the Roseville Macy's left. As a result, relator never worked for the Roseville Macy's. Instead, she "started talking to [the Macy's in] Maplewood" and eventually applied to that store in early January. But because her

employment at Tyco had terminated and her prospective employment at the Roseville Macy's did not materialize, relator sought unemployment benefits from respondent Minnesota Department of Employment and Economic Development (department).

A department administrative clerk initially determined that relator is ineligible for benefits. Relator appealed that determination and, following a de novo hearing, the ULJ found that although relator gave notice of her intention to quit her employment effective January 3, 2012, she was discharged from employment on December 18, 2011, for reasons other than misconduct. Thus, the ULJ concluded that relator "is not denied unemployment benefits before the Sunday of the week of the intended date of quitting." But the ULJ also found that relator is "ineligible for the payment of unemployment benefits after that date" because a "preponderance of the evidence shows that [relator] did not quit her employment because of a good reason caused by the employer" and "does not show that [relator] quit her employment to accept other covered employment that provided substantially better terms and conditions of employment." Relator then filed a request for reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm, remand for further proceedings, or reverse or modify if the substantial rights of the relator were prejudiced because the ULJ's decision was affected by errors of law or was otherwise "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2012).

I. Good reason caused by employer

An applicant who quits employment is not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception is when an applicant quits for “a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason to quit that is caused by the employer is a reason “(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) (2012).

Whether an employee quit for a good reason that is attributable to the employer is a question of law, which this court reviews de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003). But the reason an employee quit is a factual question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason for quit as a factual finding). This court views the ULJ’s factual findings in the light most favorable to the decision. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Good cause to quit has been described as being “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) (quotation omitted). “The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive.” *Id.* (quotation omitted). Harassment may

constitute a good reason to quit “if the employer has notice and fails to take timely and appropriate measures to prevent harassment by a co-worker.” *See Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 595 (Minn. App. 2006).

Relator argues that she quit for good reason caused by her employer because she “endured continuous harassment by the Small Business Manager, Steve Kreyer.” But as the ULJ found, relator “was unable to give specific examples of what Kreyer did or said that she considered to be harassment.” Rather, relator testified that Kreyer harassed her by “[p]utting me down, generally [making] comments about ways that I have done something.” Relator’s testimony does not support her claim that she was subject to harassment at work. Moreover, Kreyer testified that relator had performance issues and that he was simply trying to help her or critique her. The ULJ found Kreyer’s testimony to be credible, and we defer to the ULJ’s credibility determinations. *See Lamah v. Doherty Emp’t Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007). Accordingly, there is substantial evidence in the record to support the ULJ’s determination that relator was not subject to conduct by Kreyer that would compel an average reasonable worker to quit and become unemployed rather than remaining in the employment.

Relator also appears to argue that she had good reason to quit her employment at Tyco because her position was commission only and she “needed to have a guaranteed income of some sort.” But the record reflects that relator was informed when she was hired that the position was commission only. And there is nothing in the record to indicate that Tyco breached any promises or obligations regarding the position. Instead, it appears that, after working as a commissioned employee for a few months, relator

decided that she was dissatisfied with the income. This is not a good reason to quit caused by the employer that would make relator eligible for benefits. The ULJ did not err by concluding that relator quit her employment without good reason caused by her employer.

II. Quit-for-a-better-job exception

Relator also contends that the ULJ erred by concluding that she is not entitled to unemployment benefits because her circumstances fall within the quit-for-a-better-job exception contemplated by Minn. Stat. § 268.095, subd. 1(2). Under this exception, an applicant may be eligible for benefits if the

applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment[.]

Minn. Stat. § 268.095, subd. 1(2).

An employee will not “receive benefits if he voluntarily discontinued his employment with the ‘mere possibility’ of accepting work offering substantially better conditions or substantially higher wages.” *Hackenmiller v. Ye Olde Butcher Shoppe*, 415 N.W.2d 432, 434 (Minn. App. 1987). Here, relator admitted at the hearing that, at the time she quit, she had not accepted the offer from Macy’s. Relator also admitted that she had not been given a date on which her employment at Macy’s would begin. Although relator may have intended to quit her employment at Tyco so that she could begin working at Macy’s, the record reflects that relator had not officially been hired at Macy’s

at the time she quit. Therefore, the ULJ did not err by concluding that relator was ineligible for benefits under the quit-for-a-better-job exception.

Affirmed.