**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-0745**

Maureen Plunkett,
Relator,

vs.

Rock Tenn Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 10, 2012**
**Affirmed**
**Hooten, Judge**

Department of Employment and Economic Development
File No. 29075191-3

Maureen Plunkett, St. Paul, Minnesota (pro se relator)

Rock Tenn Services, Inc., Norcross, Georgia (respondent employer)

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

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Crippen, Judge.*

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

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

**HOOTEN**, Judge

In this certiorari appeal of a denial of unemployment benefits, relator claims that she is entitled to benefits because she quit her employment as a result of a hostile work environment and for health reasons. Because there is substantial evidence in the record that relator resigned under circumstances not serious enough to compel an average, reasonable person to quit, failed to complain to her employer about adverse conditions so that the employer could respond, and did not quit due to medical necessity, we affirm.

## FACTS

Relator Maureen Plunkett began employment with respondent Rock Tenn Services, Inc., as a temporary employee in September 2008 and eventually became a full-time office manager. Relator provided her employer with notice of her intent to resign on December 20, 2011, effective December 30, 2011. Relator claims that she quit because of escalating workplace hostility. She stated that on December 7, 2011, one employee began yelling at another employee during a safety training meeting in front of a number of other staff members. On December 13, 2011, another employee yelled at a fellow employee who had been speaking with relator near her workstation. Relator asked him to stop and attempted to calm him down, but she succumbed to yelling at him as well.

On December 19, relator was disciplined for her involvement in the December 13 confrontation. Relator argues that the resulting disciplinary report was damaging because she strongly believed that she was the only employee reprimanded for this particular

incident[1] and was, at the time, applying for a position with the employer's home office in Georgia.[2] Relator also alleges that her manager falsely documented in her employment file that she made derogatory statements about a fellow employee during the disciplinary proceeding and that her manager told this employee about the allegedly derogatory statements. She states that this communication further escalated the tensions in the office, as this employee brushed against relator in an aggressive manner and stared at relator whenever relator encountered her in the office. Relator asserts that her manager informed her that a few of the employees in the office, out of approximately ten employees in all, did not want to work with her. Relator claims that these events damaged her career, her work relationships, and her health. There is no dispute that her manager was aware that she was experiencing elevated blood pressure, but relator admitted that she never asked for any leaves of absence or accommodations to deal with health issues or the work environment.

After hearing relator's testimony, the unemployment law judge (ULJ) concluded that relator was ineligible for employment benefits because she quit her employment and no statutory quit-exception applied. Relator requested reconsideration, and the ULJ affirmed. Relator now brings this certiorari appeal.

[1] Her belief that she was the only employee disciplined was based upon the fact that she sat at the front desk and only saw the human resource manager, who was based at another office, at her work location for her disciplinary proceeding.

[2] Relator concedes that she was not denied a transfer because of the disciplinary action.

## D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the conclusion, decision, findings, or inferences 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). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). A 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). "[W]e will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An applicant who quits employment is ineligible for all unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2010). Relator claims that she is eligible for benefits under two statutory exceptions. She first claims that she quit because of a good reason caused by her employer. *Id.*, subd. 1(1) (2010). A good reason caused by the employer for quitting is a reason that "is directly related to the employment and for which the employer is responsible," "is adverse to the worker," and "would

compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2010). "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). The statute further requires that the applicant "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 concluded that relator's proffered reasons for quitting were not serious enough to compel an average, reasonable person to quit and become unemployed rather than remaining in the employment. This conclusion is supported by substantial evidence. There is no showing that the alleged hostile work environment amounted to anything beyond disagreements at work. A good reason caused by the employer for quitting "does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with [her] working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). Relator does not describe how these verbal disagreements, unpleasant as they may have been, affected her ability to effectively carry out her job responsibilities alongside the apparent majority of her co-workers who were not involved in any of the confrontations. *See Portz*, 397 N.W.2d at 14; *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (stating that a good personal reason does not equate with good reason

to quit). Relator's argument is also undercut by the fact the she justified her decision to quit when she did, in part, by explaining that "the write-up was very damaging" and that they "were coming up on our increases and it was my hopes that . . . once everything reaches [the home office] that they would call and . . . resolve this." Relator also admitted that she did not know as "an actual fact" whether any other employees were disciplined after the incident and conceded that the employer was not obligated to provide her with details of any other disciplinary action.

Relator also argues that her manager created a hostile work environment by relaying false allegations made by relator about another employee to that employee, thus causing friction at the office and resulting in a good reason to quit. *See Nichols*, 720 N.W.2d at 595 (stating that harassment may constitute good reason if the employer has notice and fails to take timely and appropriate measures to prevent harassment by a co-worker). However, there is no evidence that her manager actually passed on the purported allegations, nor is there evidence setting forth the substance of the purported allegations.[3] She admits that the particular employee that she was accused of defaming would not acknowledge her prior to the incidents at issue.

The ULJ also concluded that relator failed to complain to her employer about adverse conditions and to provide a reasonable opportunity for a response as required by

[3] This conclusion is supported by relator's argument for reconsideration, which included a statement that "other staff was angry and brushing past with expressions of anger on her face based on non-true facts that had been communicated *either directly or indirectly* to her about . . . the defamatory statements . . . made by the manager." (Emphasis added). This statement is reasonably construed as an admission that relator was not actually aware of the circumstances, if any, under which her manager passed on her accusations.

section 268.095, subdivision 3(c). This conclusion is also supported by substantial evidence. Relator admitted that she offered her resignation only a day after being disciplined. She argues that she "spoke with [her] manager on numerous occasions about taking steps to address the growing hostility." We recognize that an employee had good cause to quit employment when she keeps "her employer informed of continuing problems with a co-worker" involving "intentional and continuing harassment." *Nichols*, 720 N.W.2d at 597. However, the record establishes that relator merely suggested that the staff members participate in team building activities. There is no evidence that relator ever complained about any previous hostility prior to the December incidents.

Finally, there is no merit to relator's claim that she is entitled to benefits under the medical necessity exception, Minn. Stat. § 268.095, subd. 1(7) (2010), which allows unemployment benefits to be paid to an employee who quits as a result of medical necessity due to a serious illness or injury. This exception "only applies if the applicant informs the employer of the medical problem and requests an accommodation and no reasonable accommodation is made available." *Id.* There is no evidence in the record showing that it was medically necessary for relator to quit her employment and there is no evidence that relator ever requested an accommodation due to her health concerns prior to submitting her resignation.

We conclude that there is substantial support in the record that relator did not quit her employment because of a good reason caused by the employer and that the reasons given by relator for quitting were not serious enough to compel an average, reasonable person to quit and become unemployed. There is insufficient evidence in the record that

prior to terminating her employment, relator complained to her employer so that the employer could correct any claimed adverse working conditions or that she quit as a result of medical necessity. Based upon this record, relator's claim for benefits was properly denied.

**Affirmed**