STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0300

Danella Sowe,
Relator,

vs.

Park Nicollet Clinic,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 25, 2013
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 30093014-4

Danella Sowe, Shakopee, Minnesota (pro se relator)

Brian Thomas Benkstein, Felhaber, Larson, Fenlon & Vogt, Minneapolis, Minnesota (for respondent Park Nicollet Clinic)

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

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

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

PETERSON, Judge

In this certiorari appeal from an unemployment-law judge's decision that relator is ineligible for unemployment benefits because she quit her employment without good reason caused by the employer, relator argues that (1) she did not voluntarily resign to attend classes as her resignation statement says and (2) she was forced to resign in retaliation for reporting that her supervisor and others had engaged in misconduct against her. We affirm.

FACTS

Relator Danella Sowe was employed as a phlebotomist by respondent Park Nicollet Clinic from December 2010 through August 8, 2012. Until June 2012, relator, who was attending school to obtain a nursing degree, worked five morning shifts a week, which fit with her class schedule. In April 2012, following a workforce assessment of all of the employer's clinics, Park Nicollet told its part-time employees that they would be required to work eight-hour shifts from 7:45 a.m. to 4:45 p.m., which coincided with the clinics' hours of operation and worked better for Park Nicollet when scheduling laboratory staff. Beginning in June 2012, relator was scheduled to work from 7:45 a.m. until 4:45 p.m. on Wednesdays, Thursdays, and Fridays. Relator was scheduled for morning and afternoon classes in the fall of 2012, which conflicted with her work schedule.

After the schedule change was announced in April, relator talked to laboratory supervisor Ramona Gorter and laboratory manger Rebecca Sefton about changing to a

casual position when classes started in August, and they said that they would look into it. On July 22, relator applied for three positions. On July 26, Gorter met with relator and gave her a written warning for misidentifying a patient on a lab specimen, which violated Park Nicollet's policy. The policy provided for a written warning for a first violation, and, as a result of the warning, relator became ineligible to transfer to another position within Park Nicollet for six months. During the July 26 meeting, Gorter asked relator whether she would be able to work her scheduled hours when school started on August 27, and relator said that she would not. Gorter told relator that if she could not work her scheduled hours, she would be placed on a performance-management plan and discharged. Gorter suggested that relator resign before the school year started so that she could maintain her eligibility for rehire.

Relator believed that the written warning was unfair and talked to Sefton about it and also brought up some concerns about Gorter's leadership. On August 8, Sefton and lab director Nicole Khoury met with relator to discuss her concerns. Sefton agreed to look into relator's complaint and then asked whether relator would be able to work her scheduled shifts when fall classes began. Relator said that she would not. Khoury suggested that it might be best for relator to resign to maintain her eligibility for rehire, and relator agreed that it might be best. Relator wrote a resignation letter stating that August 8 would be her last day of work, citing distress and unspecified situations that had occurred in the lab.

Relator applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination

of ineligibility. Relator appealed, and a hearing was conducted before an unemployment-law judge (ULJ). The ULJ determined that relator was ineligible for unemployment benefits because she quit employment without a good reason caused by the employer. The ULJ affirmed on reconsideration. This certiorari appeal followed.

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 relator's substantial rights 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) (2012). We review the ULJ's findings of fact in the light most favorable to the decision and will not disturb the findings if the record substantially supports them. *Stassen v. Lone Mountain Truck Leasing, LLC,* 814 N.W.2d 25, 31 (Minn. App. 2012). We defer to the ULJ's evaluations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp't Grp., Inc.,* 737 N.W.2d 595, 598 (Minn. App. 2007).

I.

An applicant who quits employment is ineligible for unemployment benefits unless a statutory exception to ineligibility applies. Minn. Stat. § 268.095, subd. 1 (2012). "Whether an employee has been discharged or voluntarily quit is a question of fact . . . ." *Stassen,* 814 N.W.2d at 31.

> (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.
>
> (b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, is considered to have quit the employment.

Minn. Stat. § 268.095, subd. 2 (2012). "A discharge from employment 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(a) (2012).

In *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 356 (Minn. App. 1983), an employee was told by a supervisor that the plant manager was seeking to have the employee discharged. The employee decided to resign in order to protect his work record. *Id.* This court affirmed the ULJ's finding that, because a formal decision had not been made to discharge the employee, he voluntarily terminated his employment by resigning. *Id.* at 357-58. Similarly, in *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984), this court affirmed the ULJ's determination that a police officer voluntarily quit employment when, in order to protect his work record, the officer resigned before the city took action to terminate his employment.

Relator argues that she did not voluntarily quit and, instead, was forced to write the August 8 resignation letter. But the ULJ found:

> [Relator] testified that on August 8, 2012, Sefton and Khoury told her that there was nothing they could do for her and she should leave and make it her last day, based on her attitude and being so upset. Sefton testified that [relator's]

> attitude did not come up in the discussion and they did not tell [relator] it was her last day or ask her to resign. [Relator] testified that she had no reason to resign on August 8, 2012, and would have worked until August 24, 2012, at which time she would have resigned if there was no other job. [Relator] testified that she was pressured to fill out the paper and told she would be fired if she did not resign. It is clear that [relator] knew on July 26, 2012, that Gorter had told her it was best to resign on August 24, 2012, if she could not work the schedule. It is not believable that [relator] would think August 8, 2012, had to be her last day or that the employer would prefer someone leave with no notice. [Relator] also testified that when she wrote her statement that August 8, 2012 would be her last day, she told the employer it was not a resignation. [Relator] is not believable that she could write what she did, if she did not mean that she was resigning or that she decided it was her last day. [Relator] certainly would have written down if she meant otherwise. [Relator] resigned, effective August 8, 2012, because she was mad and could not accept that the employer was enforcing the work schedule and not accommodating her schooling and she was mad at getting a written warning. The employer did not make any statement or take any action on July 26, 2012 or August 8, 2012, that would lead a reasonable employee to believe that they could no longer work for the employer in any capacity.

Sefton's and Gorter's testimony, which the ULJ specifically found credible, supports the ULJ's finding that the employer took no action that would lead relator to believe that she could not work for Park Nicollet after August 8, 2012. Applying the plain language of Minn. Stat. § 268.095, subd. 2(b), the ULJ did not err in finding that relator voluntarily quit employment.

II.

An applicant who quit employment is eligible for benefits if "the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3." Minn. Stat. § 268.095, subd. 1(1).

> A good reason caused by the employer for quitting is a reason:
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> (1) that is directly related to the employment and for which the employer is responsible;
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> (2) that is adverse to the worker; and
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> (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Id., subd. 3(a) (2012). This analysis "must be applied to the specific facts of each case." *Id.,* subd. 3(b) (2012). "Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting." *Id.,* subd. 3(e) (2012). "The definition of a good reason caused by the employer for quitting employment provided by this subdivision is exclusive and no other definition applies." *Id.,* subd. (3)(g) (2012). Whether an employee had good reason to quit is a question of law. *Edward v. Sentinel Mgmt. Co.,* 611 N.W.2d 366, 367 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). 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).

Appellant argues that she was forced to leave employment due to her reporting "misconduct that occurred towards [her] in the laboratory department that was conducted by [her] laboratory supervisor and other staff members." Appellant contends that, shortly

after her July 26 meeting with Gorter, "there were road blocks set up" that made her ineligible to transfer to another job at Park Nicollet. But the ULJ found:

> In [relator's] prior written statement to the department, [relator] submitted a rebuttal that she sent to human resources on August 8, 2012, claiming the written warning was in retaliation for not agreeing to resign. This does not make sense because the written warning was prepared by Gorter prior to the meeting on July 26, 2012, where possible resignation was discussed. The evidence supports that [relator] did make the error of misidentification of the lab specimen that caused the warning. . . . Sefton testified that she had looked into the written warning and the error could be traced to [relator] by IT, showing [relator] was responsible.

The ULJ's findings are supported by substantial evidence and they refute relator's claim that the July 26 warning was written to force her to leave her employment by preventing her from obtaining another position at Park Nicollet. The warning was issued because relator misidentified a patient on a lab specimen, and, as a result of the warning, relator became ineligible to transfer to another position for six months.

Relator's ineligibility to transfer to another position meant that relator's work schedule would conflict with her class schedule when school started on August 27. But even if this meant that relator would be discharged in the future because she could not work her schedule, relator did not have a good reason for quitting on August 8 because, under the statute, notification of discharge in the future is not considered a good reason for quitting caused by the employer. *See* Minn. Stat. § 268.095, subd. 3(e).

Affirmed.