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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0332

Leila Amin,
Relator,

vs.

Nordstrom, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 4, 2013
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 30475913-3

Leila Amin, Minneapolis, Minnesota (pro se relator)

Nordstrom, Inc., c/o TALX UCM Services Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

In this certiorari appeal, relator challenges the unemployment-law judge's (ULJ) conclusion that she quit her employment and is ineligible for unemployment insurance. Because we see no error in the ULJ's decision, we affirm.

FACTS

Relator Leila Amin worked for respondent Nordstrom Inc. from January 26, 2012 until October 27, 2012. After her separation from Nordstrom, she applied for unemployment insurance and on December 3 respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility. On December 5, relator appealed DEED's determination. The ULJ heard the appeal on December 19.

At the evidentiary hearing, relator testified that she worked for Nordstrom as a full-time housekeeper and was responsible for cleaning the bathrooms and vacuuming the floors. In September 2012, Nordstrom asked her to clean the carpets, but she did not want to because she did not think it was one of her duties and because she believed that doing so would exacerbate preexisting back pain.

On September 21, relator told Peggy Lalopoulos, a Nordstrom human resources representative, that she was unable to clean the carpets because of her back pain. Lalopoulos testified that she told relator that in order to receive a work accommodation, relator needed to provide medical documentation of her injury but that Nordstrom would not require her to clean the carpets while she sought it. Relator, however, disagreed with

Lalopoulos's account and testified that "[n]o, they didn't give me a week for accommodation, they give me hard, all time, every day they were calling me to say you have to do this and I told them that I didn't have medical insurance card."

Relator scheduled a doctor appointment for November 1 and informed Lalopoulos of this appointment on October 8. Lalopoulos responded that because Nordstrom had already been accommodating her since September 21, relator needed to schedule an earlier appointment. Lalopoulos testified that a few days later, relator informed her that she had not yet attempted to schedule an earlier appointment. Relator again disagreed with Lalopoulos's account and testified that she had tried to make an earlier appointment but "was trying to get a cheaper medical deal" because she did not have medical insurance. At the end of their second conversation, relator gave Lalopoulos her two week notice of resignation.

Relator's last day working for Nordstrom was October 27, 2012. Lalopoulos testified that relator did not have to resign, that she could have continued working through her November 1 doctor appointment, and that if she had done so without rescheduling, her "manager would have been advised to coach her on it."

Relator did not attend her scheduled November 1 doctor appointment and had not spoken with any doctor about her back pain as of the date of the evidentiary hearing. She testified that she does not have any trouble walking, sitting, standing, or lifting any type of weight. Before working for Nordstrom, relator met with a doctor about her back but the doctor did not diagnose any injury or impose any work restrictions. Relator claims to

have now obtained letters from a doctor and a chiropractor documenting her injury but they are not contained anywhere in the record.[1]

At the hearing, relator presented two witnesses who are Nordstrom housekeepers. One testified that Nordstrom sometimes asks her to clean the carpets. The other testified that she does not clean the carpets because she gave Nordstrom documentation of her back pain.

On December 20, the ULJ issued her decision. The ULJ found that carpet cleaning was one of relator's housekeeping duties, that Nordstrom had accommodated relator's injury after September 21, that relator failed to contact the clinic to request an earlier appointment, and that after submitting her notice of resignation, relator did not attempt to see any doctor about her back. Based on these findings, the ULJ concluded that relator was ineligible for unemployment benefits because she quit her job with Nordstrom and because she did not fall within any of the exceptions to ineligibility for quitting.

On December 26, relator requested that the ULJ reconsider the decision. On January 25, 2013, the ULJ reaffirmed the previous decision and declined to admit additional exhibits. This certiorari appeal follows.

[1] The ULJ declined to admit these letters because relator had not satisfied the statutory requirements for a new evidentiary hearing. We defer to the ULJ's decision not to hold an additional evidentiary hearing. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

D E C I S I O N

This court may affirm, remand for further proceeding, reverse, or modify the decision of the ULJ, if it prejudiced the relator's substantial rights because the decision was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious. *Van de Werken v. Bell & Howell, LLC*, 834 N.W.2d 220, 221 (Minn. App. 2013) (citing Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (2012)).

"This court views the ULJ's factual findings in the light most favorable to the decision," defers to the ULJ's credibility determinations, and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008) (citing Minn. Stat. § 268.105, subd. 7(d) (2006)). This court reviews de novo, however, a ULJ's determination that the relator is ineligible for unemployment insurance. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 30 (Minn. App. 2012).

I.

Relator first challenges the ULJ's finding that she quit her employment with Nordstrom, arguing that she was "fired." An employee quits when "the employee makes the decision to end the employment." *Id.* at 31. An employee is discharged "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." *Bangston v. Allina Med. Group*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). Whether an employee quit or was discharged is a factual finding subject to this court's deference. *Stassen*, 814 N.W.2d at 31.

The ULJ found that relator quit her job and the record substantially supports this finding. Relator filed a formal notice of resignation with Nordstrom. She also testified that she "quit the job because when they ordered me to clean the carpet, I don't have choice, [then] yes, I quit." Even if her decision to quit was in anticipation of her termination, the statute defines that decision as a quit. *See Bangston*, 766 N.W.2d at 332-33 ("[A]n employee can receive a notice of discharge and then proceed to end his employment before the discharge is effective. When this happens, the employee is considered to have quit his employment."). The record, therefore, substantially supports the ULJ's finding that relator quit.

II.

Next, relator contends that even if she did quit her employment, she did so for a good reason caused by her employer because, (1) Nordstrom was going to fire her if she continued to refuse to clean the carpets; (2) due to financial hardship, she was unable to comply with Nordstrom's demand that she reschedule her doctor appointment; and (3) carpet cleaning was not part of the job Nordstrom hired her to perform. We disagree.

Generally, unemployment insurance applicants who quit their job are ineligible for benefits. *Grunow v. Walser Auto. Group LLC*, 779 N.W.2d 577, 580 (Minn. App. 2010) (citing Minn. Stat. § 268.095, subd. 1 (2008)). Applicants who have quit may remain eligible, however, if they "quit the employment because of a good reason caused by the employer." *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840, 842 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010). A good reason 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). This third element requires that the employee was actually compelled to quit by "extraneous and necessitous circumstances," and sets an objective standard of reasonableness. *Werner*, 782 N.W.2d at 843 (quoting *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976)). Whether an employee quit for good reason caused by her employer is a question of law which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012).

First, to the extent that relator quit her employment with Nordstrom because she thought it would fire her for not cleaning the carpets, she is ineligible for unemployment insurance. Under Minn. Stat. § 268.095, subd. 3(e) (2012), "[n]otification of discharge in the future" cannot be a good reason caused by the employer. Here, relator did not even have actual notice of her discharge; she merely anticipated that outcome.

Relator also argues that she had good reason to quit because she could not afford to reschedule her doctor appointment and, therefore, Nordstrom's insistence that she do so left quitting as her only option. The record demonstrates that Nordstrom's requirement that relator reschedule her appointment did not compel her resignation or make it necessary, as the law requires.

After submitting her notice of resignation, relator continued to work at Nordstrom for over two weeks and stopped working only four days before her November 1 doctor appointment. At that point, Nordstrom had not threatened to fire her and Lalopoulos

testified that relator could have continued to work through November 1 without quitting. While it is possible that relator's continued refusal to clean the carpets would eventually result in some form of sanction, relator submitted her notice of resignation before Nordstrom took any action against her. The record, therefore, demonstrates that at the time she submitted her notice of resignation, relator was not compelled to resign and that she could have continued working. Applicants who, like relator, are not objectively compelled to resign do not satisfy the requirements of the good reason to quit exception. *See Werner*, 782 N.W.2d at 843 (emphasizing that the applicant must have been compelled to quit).

Finally, relator maintains that carpet cleaning was not one of the job duties Nordstrom hired her to perform. We agree that in some circumstances, applicants who quit because an employer has altered the expectations of job performance are eligible for benefits under the good reason to quit exception. *See, e.g.*, *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (reversing an ineligibility determination because relator quit his job after his required work hours more than doubled over a two year period). In this case, however, the record does not support relator's claim that Nordstrom altered her duties. At the evidentiary hearing, both of relator's witnesses were housekeepers and testified that Nordstrom had asked them to clean carpets. Based on this testimony, the ULJ found that carpet cleaning was one of relator's duties. We will not disturb the ULJ's factual findings "when the evidence substantially sustains them." *Peterson*, 753 N.W.2d at 774. Because the record substantially supports the ULJ's finding that, as a housekeeper, relator was responsible

for carpet cleaning, there is no basis to conclude that Nordstrom altered the expectations of relator's job performance.

III.

Relator also contends that even if she did quit, it was due to a medical necessity that Nordstrom refused to accommodate. We are not persuaded that Nordstrom did not accommodate relator's injury.

An applicant who quits her employment may remain eligible for insurance if she quits because a "serious illness or injury made it medically necessary," provided the applicant, (1) "informs the employer of the medical problem;" (2) "requests accommodation;" and (3) "no reasonable accommodation is made available." Minn. Stat. § 268.095, subd. 1(7) (2012). Whether an employee quit due to medical necessity is a question of law which we review de novo. *See Madsen v. Adam Corp.*, 647 N.W.2d 35, 38-39 (Minn. App. 2002) (reviewing application of the medical necessity exception de novo).

In this case, the record demonstrates that relator informed Nordstrom of her back injury and that she requested an accommodation. But in order to claim eligibility under this exception, the employer must also have provided "no reasonable accommodation." Minn. Stat § 268.095, subd. 1(7). Under this statutory language, if the employer makes any reasonable accommodation, an applicant remains ineligible for insurance. *See Thao v. Command Ctr., Inc.*, 824 N.W.2d 1, 5 (Minn. App. 2012) ("If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language.") (quotation omitted).

In this case, Nordstrom provided relator with reasonable accommodations. The record shows that after relator requested an accommodation on September 21, Nordstrom relieved her from carpet cleaning responsibilities for at least 20 days. Nordstrom also told her that it would fully accommodate her injury upon receipt of medical documentation. Generally, when employers make accommodations available, as Nordstrom did here, the medical necessity exception does not apply. *Compare Madsen*, 647 N.W.2d at 38-39 (finding a medical necessity when the employee could no longer perform her duties and no position within the company could accommodate her condition without a reduction in both pay and hours), *with Hirt v. Lakeland Bakeries*, 348 N.W.2d 400, 402 (Minn. App. 1984) (finding no medical necessity when the employer created a new position tailored to the employee's medical restrictions).

We agree with relator that during the temporary accommodation period, Nordstrom continued to insist that she see a doctor and reschedule her appointment. It is not unreasonable, however, for employers to enforce policies that require proof of injury before granting a permanent work accommodation. The statute does not grant unemployment insurance eligibility anytime an employer fails to provide every requested accommodation; it only does so when the employer provides "no reasonable accommodation." Because the record supports the conclusion that Nordstrom provided a reasonable accommodation, relator's claim does not meet the requirements of the medical necessity exception.

Relator has not shown that it was medically necessary for her to quit or that she quit due to good reason caused by her employer. Nor has she shown that Nordstrom

failed to make a reasonable accommodation for her. Thus, relator has failed to demonstrate that the ULJ's decision was erroneous, unsupported by substantial evidence, or arbitrary or capricious.

Affirmed.