**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-0458**

Carole A. Swanson,
Relator,

vs.

County of Hennepin,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 22, 2008**
**Affirmed**
**Crippen, Judge**[*]

Department of Employment and Economic Development
File No. 14111 06

Carole A. Swanson, 325 Marymeade Drive, #313, Summerville, SC 29483 (pro se relator)

Michael O. Freeman, Hennepin County Attorney, Sara E. Wahl, Assistant County Attorney, A-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent Hennepin County)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Crippen, Judge.

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[*] 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

**CRIPPEN,** Judge

Relator Carole Swanson challenges the decision of the unemployment law judge (ULJ) that she quit her employment without good reason caused by the employer and was therefore disqualified from receiving unemployment benefits. Because there is ample evidence that relator did not have good cause to quit and there was no error of law, we affirm.

## FACTS

For two and one-half years through September 29, 2006, relator worked full time for Hennepin County as an office support specialist, providing administrative support for probation officers. Relator contends that unfair treatment by Juli Jones, her direct supervisor, forced her to quit her job.

In 2004, relator complained to Jones that a coworker was taking long lunch breaks and not relieving relator's front-desk assignment as scheduled. Jones met with both relator and the coworker and told them to work out the problem between themselves. In early 2005, relator began having interpersonal problems with another coworker. Relator and the coworker resolved their problems, and Jones commended them for resolving the conflict.

In May 2005, following an investigation, it was determined that relator violated county and departmental computer policy by personally accessing the Internet during work hours, installing unauthorized software, inappropriately using her e-mail at work, impeding an e-mail usage investigation, and failing to follow her supervisor's directives.

Relator's response to these allegations ranged from partial admission to complete denial. She claimed that others similarly used the Internet for personal reasons. Based on the investigation, Jones suspended relator for five working days without pay, which relator perceived as unfair. Ultimately, through her union, relator filed a grievance of the suspension and agreed to a settlement of a one-day suspension.

Relator also perceived that Jones wrongfully denied her 2006 request for family leave time to attend her daughter's Make-a-Wish program trip. Jones consulted with human-resources workers and was advised that the trip was for non-medical reasons and thus not covered by family-medical-leave laws. Jones denied relator's medical-leave request but granted her leave (either unpaid or through use of existing vacation days) to go on the trip.

From June to September 2006, relator claims Jones continued to reprimand and retaliate against her. For example, Jones reprimanded relator for giving her insurance claims representative the front desk number, which was only supposed to be used for emergencies. On another occasion, Jones informed relator that because of scheduling issues, relator would not be able to attend a training session for which she had previously registered. Finally, in September 2006, Jones orally reprimanded relator for receiving personal calls at the front desk, inappropriately paging Jones, using her home computer on work issues, and failing to follow the chain of command when relator had concerns.

Following the September 2006 reprimand, relator took steps to file a harassment complaint against Jones. On September 19, a human services employee gave her a list of questions that she was to address by September 25. On September 20, 2006, Jones set up

an investigation meeting without advising relator on the subject matter; because relator had a doctor's appointment that afternoon, she did not attend the meeting.

On September 21, 2006, relator called Jones and resigned. Upon failing to receive relator's written response that was due on September 25, a human services worker wrote a letter to relator stating that she was unable to find any substantiating evidence to support her claim.

Following her resignation, relator applied for and was denied unemployment benefits. Following a de novo review of the denial, the ULJ determined that relator was disqualified from receiving benefits because she quit her employment without a good reason caused by her employer; the ULJ affirmed this decision on reconsideration.

**D E C I S I O N**

On certiorari appeal this court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006).

**1.**

Relator contends that she had good reason caused by her employer to quit because Jones discriminated and retaliated against her. Whether an employee had good reason to quit caused by the employer is a question of law, which we review de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003). But in reviewing the ULJ's factual findings, "[w]e view 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). "[W]e will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

There is no dispute that relator voluntarily quit her employment. Under Minn. Stat. § 268.095, subd. 1(1) (2006), an employee who voluntarily quits her employment is disqualified from receiving unemployment benefits unless the employee had "good reason caused by the employer" to quit. A good reason caused by the employer is a reason that: (1) is directly related to the employment; (2) is adverse to the worker; and (3) would compel an average, reasonable worker to quit and become unemployed. *Id.*, subd. 3(a) (2006). The test for reasonableness in this context is objective and is applied to the average person, not the supersensitive. *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976).

Relator first argues that Jones discriminated and retaliated against her when she punished her unfairly. The ULJ found that the "evidence supports a finding that [relator's] supervisor . . . did not retaliate against her or discriminate against her because of her complaints. [Relator] was disciplined for legitimate issues." The ULJ's determination that relator was legitimately disciplined is supported by substantial evidence. Relator's own testimony and exhibits support the finding of cause for Jones' responses. Relator admitted several violations of the employer's policy, including using the Internet for personal reasons, deleting oversight access to her e-mail, sending disparaging e-mails to a coworker, providing the front desk "emergency-only" phone number to personal contacts, checking and responding to office e-mail from home, and

sending personal e-mails to the staff. The record adequately supports the ULJ's findings. There is nothing in the record requiring a finding that the employer either misrepresented the practices of relator or dealt excessively with them.

Relator also claims that Jones treated her more severely than other employees and that this disparate treatment was discrimination that caused her to quit. Relator cites the absence of punishment for personal use of business computers by others, job requests that were not made of others, and requests that relator cover shifts at the public safety facility even though other employees were also trained to fulfill this task. The ULJ determined that this was not evidence of discrimination.

We agree with the ULJ's determination. "Violation of an employer's rules by other employees is not a valid defense to a claim of misconduct." *Dean v. Allied Aviation Fueling Co.*, 381 N.W.2d 80, 83-84 (Minn. App. 1986). Whether other employees violated the rules or were assigned to different tasks is irrelevant in determining that relator was legitimately disciplined or properly assigned to different tasks. *See Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986) (whether employer selectively enforced its rules against employee and not other employees who violated the same rules is irrelevant in determining whether employee engaged in misconduct), *review denied* (Minn. Aug. 20, 1986).

In sum, it is evident that relator was dissatisfied with Jones as her supervisor, resulting in a tumultuous relationship between the two. But "'good cause attributable to the employer' does not encompass situations where an employee experiences irreconcilable differences with others at work or [is] dissatisfied with his working

conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986); *see Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that employee did not have a good reason to quit when her supervisor made it clear that he wanted to get rid of her, stopped talking to her, and greatly reduced her work duties). Also, "[a] good personal reason does not equate with good cause" to quit. *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted). This record permits the ULJ's determination that relator quit without good reason caused by the employer.

**2.**

Relator claims that the ULJ erred in failing to provide support for his credibility determinations. Credibility determinations are generally the "exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. We must uphold the ULJ's credibility determination when it is supported by substantial evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). But "[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006); *see Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007) (case remanded where "ULJ made no [specific credibility] findings . . . [and] credibility was central to the decision because the ULJ's misconduct determination rests on incidents that [relator] disputes").

Relator's argument fails because credibility determinations did not have a significant effect on the outcome of the case. In reaching his decision, the ULJ did not rely on credibility determinations. Instead, the ULJ continually referred to direct evidence in support of his determination, including relator's admissions and exhibits.

**Affirmed.**