STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1141

Richard L. Long,
Relator,

vs.

Joyner's Die Casting and Plating, Inc.,
Respondent,

Department of Employment and Economic Development.
Respondent.

Filed July 15, 2008
Affirmed
Minge, Judge

Department of Employment and Economic Development
File No. 15306 06

Richard L. Long, 2700 Parke Avenue South, #1606, Minneapolis, MN 55407-1037 (pro se relator)

Shirley Lerner, Noah G. Lipschultz, Littler Mendelson, 80 South Eighth Street, 1300 IDS Center, Minneapolis, MN 55402-2136 (for respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent department)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

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

MINGE, Judge

Relator appeals the determination that he was disqualified from receiving unemployment insurance benefits, arguing that the unemployment law judge (ULJ) abused his discretion by refusing to hear all the witnesses that relator called to testify and that, because he was subjected to a hostile work environment and was not given the computer resources required to perform his job duties, he had good reason caused by his employer to quit. We affirm.

FACTS

Relator Richard Long worked for Joyner's Die Casting & Plating, Inc. (Joyner's or employer) from September 2003 until September 21, 2006 at an annual salary of about $48,000. His principle work responsibility was as project manager for Joyner's certification by International Organization for Standardization (ISO). ISO is a quality management system for monitoring quality in manufacturing processes. Joyner's was ISO certified in 2004. Based on annual audits, Joyner's retained that certification in 2005 and 2006. During the 2006 audit, the ISO auditor told Long that to remain ISO certified in the future, Joyner's had to have a computer system that could track nonconformance in production.

Initially, Lyn Joyner and Dwight Joyner, the company's president and vice-president, respectively, agreed to the development of a computer system to support the ISO program. They contracted with a vendor to develop a software system, but despite significant expenditures, the vendor did not meet Long's and Joyner's expectations, and

Joyner's cancelled the contract. Although Long regularly inquired about a software system, Dwight Joyner continually put the issue off. As a result, Long had to rely on paper records and Excel spreadsheets to track production problems. The lack of a computer system made Long's job more difficult.

At weekly management meetings, Long and other managers were sometimes criticized by Lyn and Dwight Joyner because of the manager's inability to identify quality issues. Dwight Joyner advised Long and other quality production managers in a June 2006 meeting that, if they could not improve quality control, he could not guarantee that they would retain their jobs. Long was not formally disciplined because of his performance, and he was never advised that he was being discharged.

In early September 2006, Long took several vacation days due to transportation problems. Long testified that during his absence, he concluded that the ISO program was not a priority at Joyner's, that he was not getting the support he expected for the ISO program, and that things were unlikely to change. On September 21, 2006, Long quit his employment with Joyner's.

Long applied for unemployment insurance benefits. The ULJ determined that Long had quit his employment without good reason caused by his employer and that he was therefore disqualified from receiving benefits. The decision was affirmed on reconsideration. This certiorari appeal follows.

D E C I S I O N

This court may reverse or modify a ULJ's decision if the employee's substantial rights have been prejudiced because the ULJ's findings, inferences, conclusion, or

decision are affected by error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006). Questions of law are reviewed de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). We review the ULJ's factual findings to determine whether they are supported by substantial evidence, and we defer to the ULJ's credibility determinations. Minn. Stat. § 268.105, subd. 7(d)(5) (defining substantial evidence standard); *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (noting that credibility determinations are resolved by the ULJ and that this court will defer to those determinations on appeal); *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that we view the ULJ's findings of fact in the light most favorable to the decision).

I.

The first issue is whether the ULJ abused his discretion by declining to allow all of the witnesses Long called to testify. According to the Minnesota Unemployment Insurance statute,

> [t]he unemployment law judge shall ensure that all relevant facts are clearly and fully developed. The department shall adopt rules on evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The department shall have discretion regarding the method by which the evidentiary hearing is conducted.

Minn. Stat. § 268.105, subd. 1(b) (2006). The ULJ "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007). "A judge may exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious." Minn. R. 3310.2922 (2007).

Long wanted to call at least 11 managers and other employees of Joyner's to testify. His intention was to show that these other employees had been treated with hostility, as he had, and that he had good reason to leave his employment. The ULJ informed Long that, rather than having each of his witnesses personally testify, he could simply state the kinds of treatment he believed he and other managers had experienced, and that although it was hearsay, it would be admitted as evidence. The ULJ added that after hearing Long's testimony, he would determine whether additional testimony of specific witnesses was needed on any particular point.

Long testified that he felt that he and others had been mistreated as a result of their inability to produce particular work product or quality reports and that such reports were impossible to generate without the help of computers. Long stated that he and others had been "public[ly] berat[ed]" at the regular management meetings regarding these problems, that he had been held accountable for a vendor's refusal to complete the software project, and that other managers had similarly been unreasonably held accountable for problems that were not their fault. Long stated that if he was allowed to call the other employees as witnesses, they would testify to these matters and specific incidents of hostility, such as a fight between Lyn Joyner, the president of the company, and an employee that resulted in the employee keeping her office door closed for three weeks. Other employees would testify that Dwight Joyner had informed Long and some other managers that unless they managed production quality better, he could not guarantee that they would keep their jobs.

The ULJ asked Long for details about these interactions, accepted them into evidence, heard testimony from one other employee, and appears to have considered this evidence in making his final determination. As we already noted, the ULJ appears to indicate to Long that, should any of his assertions signify that there was a material factual dispute, he would be allowed to call his additional witnesses to testify in order to clarify the circumstances under which Long decided to leave his employment. On this record, there does not appear to be any material factual conflict regarding the circumstances that Long complained of. Generally, witnesses testified that Joyner's could be a tense place to work, that employees sometimes disagreed with their supervisors, and that Long did not have access to the resources he desired. Absent a material factual dispute, additional testimony could reasonably be considered repetitive. The ULJ had discretion to exclude repetitive testimony. *See* Minn. R. 3310.2922.

Given the discretion of the ULJ to manage the hearing and his offer to accept Long's hearsay testimony in lieu of the testimony of his co-workers, we conclude the ULJ did not abuse that discretion.[1] Rather, the ULJ carefully probed both Long and the

[1] We note that over the course of the hearing and in the ULJ's subsequent findings, several factual determinations favored Long. For example, Joyner's argued that Long quit because of the transportation problems that had prevented him from attending work for several days before he quit. Long contended that, although he had told Joyner's he could not make it to work because of his transportation problems, he had ultimately quit because of the negative environment at Joyner's. To the extent that this was disputed, the ULJ accepted Long's arguments. Additionally, Joyner's elicited testimony from Long that he had had a conversation with another employee at Joyner's, wherein he stated that "[I]t's difficult to get unemployment. But I . . . wasn't too concerned about getting it the way things were going for me." The ULJ did not draw any negative inferences against Long as a result of this testimony. Despite Long's inability to call all of the witnesses he desired, the ULJ made several factual findings that conformed with Long's position.

other witnesses, and developed a record adequate enough to ensure that "all relevant facts [were] clearly and fully developed." *See* Minn. Stat. § 268.105, subd. 1(b).[2]

II.

The second issue is whether the ULJ improperly denied Long's request for reconsideration to consider another employee's prior resignation letter. The statute provides that:

> The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c) (2006). Subpoenas are available to compel the production of documents in an unemployment benefit proceeding upon a showing of necessity. Minn. R. 3310.2914, subp. 1 (2007). This court will reverse the ULJ's decision not to hold an additional evidentiary hearing only for an abuse of discretion. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Long requested reconsideration in part to expand the record. This is akin to requesting an additional evidentiary hearing. As a part of this request, Long asked for a subpoena for a letter written by another employee who had resigned. The ULJ

[2] Although Long also makes assertions in his brief that subpoenas were not filed or properly issued, there is nothing in the record concerning his demands for subpoenas or his inability to retrieve adequate documentation of his grievances. E-mail documentation seems to indicate that Joyner's counsel was actively working with Long in an effort to secure him the documentation he requested. The formalities of the subpoena process are not before us on appeal.

determined that, because Long did not show why the requested letter could not have been presented at the original hearing, because Long had had a full and fair opportunity to present his case, and because the letter would probably not change the outcome of his case; there was no basis to issue the subpoena or order another evidentiary hearing. Long states in his appellate brief that he forgot about the letter evidence before the evidentiary hearing. However, forgetting does not constitute "good cause" for failure to request or introduce evidence. Because Long did not have "good cause" for failing to present the letter at the initial evidentiary hearing, we conclude the ULJ did not abuse its discretion in declining to award an additional evidentiary hearing on that basis.

III.

The third issue is whether Long quit for good reason caused by his employer. An applicant who quits his or her employment is disqualified from receiving benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2006). One exception is when an employee quits because of a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1). A good reason to quit caused by the employer must be "directly related to the employment . . . for which the employer is responsible," "adverse" to the employee, and serious enough to "compel an average, reasonable worker to quit and become unemployed." Minn. Stat. § 268.095, subd. 3(a) (2006). Whether an applicant quit for good reason caused by the employer is a question of law reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

"The phrase 'good cause attributable to the employer' does not encompass situations where an employee experiences irreconcilable differences with others at work

or where the employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986); s*ee also Trego v. Hennepin County Family Day Care Ass'n.*, 409 N.W.2d 23, 26 (Minn. App. 1987) (holding that an employee's dissatisfaction with the interim director was not a good reason caused by the employer to quit).

However, workers facing harassment and other untenable conditions are not denied unemployment insurance benefits if they quit. *See Wetterhahn v. Kimm Co.*, 430 N.W.2d 4, 5-6 (Minn. App. 1988) (determining that an employee, who was sworn and yelled at by a co-worker and who gave notice to her employer that this co-worker was engaging in this behavior, had good cause attributable to the employer for quitting when the measures undertaken by her employer were inadequate to address the situation).

This court has noted that an employee demonstrates "good cause" for quitting "attributable to the employer" when the employee has (1) been subjected to harassment; and (2) given the employer notice of the harassment and an opportunity to correct the problem. *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838 (Minn. App. 1987). If the employee is given an expectation of assistance from the employer, he or she then has a duty to keep the employer apprised of any additional harassment. *Id.*; *see also* Minn. Stat. § 268.095, subd. 3(c) (requiring that if workers are subjected to adverse conditions, they must complain to the employer and give the employer a reasonable opportunity to correct the problem before such conditions are considered a good reason to quit).

Long argues that Joyner's management subjected him and other employees to harassment that constituted a "good reason caused by the employer" to quit. He points

out that Joyner's has a turnover rate of 90% each year to support his contention that a "reasonable employee" would quit under these circumstances.[3] The ULJ concluded that Long and other managers were criticized for failing to achieve the quality of work expected by their employer. Long testified that, because of these unreasonable expectations, the work environment was "hostile" and some managers avoided management meetings because of the stress they created.

Long indicated that he was not provided the equipment and support he needed to complete his job. He testified that although he told his employer that he would not be able to achieve their expectations without the aid of computer software, the owner-managers of Joyner's did not take steps or authorize others to obtain such software after an initial attempt to do so failed. We acknowledge that a reasonable employee may feel compelled to quit and become unemployed for good reason caused by the employer when they are simultaneously prevented from doing their job because of a lack of resources or equipment and criticized by their failure to complete their work. However, the situation before us is not so one-dimensional.

Long performed his duties for two years without the aid of a computer software program. No doubt, the quality of Long's work suffered from the lack of computer support. However, the ISO program that he managed continued to be certified throughout Long's employment with Joyner's. The ULJ observed that the lack of a computer system "made Long's job more difficult, but not impossible, inasmuch as he

[3] Although Joyner's argues that this fact is not in the record, it is located in both the transcript and supporting documents submitted to the ULJ.

had been performing without a computer support system all along." Thus, Long was not prevented from achieving the objective of his job because of the resources he was allotted.

Budget constraints and austerity are a fact of life in any business. This is certainly frustrating for employees, but it does not necessarily constitute a "good reason to quit caused by the employer." Long disliked being challenged and reprimanded, and on occasion, he felt the reprimands were without merit. He also felt that his department should have been technologically updated and given higher priority by his management. Although Long was frustrated with his employer and did not feel that the needs of the ISO program were being prioritized, this does not rise to the level of harassment or hostility. The ULJ concluded that the lack of resources did not justify Long's decision to quit for the purposes of unemployment insurance benefits. *Cf. Tru-Stone*, 400 N.W.2d at 839 (determining that "harassment" may constitute a good cause to quit). For purposes of unemployment compensation benefits, general dissatisfaction with an employer is not good reason to quit caused by the employer. *See Trego*, 409 N.W.2d at 26. Long's dissatisfaction did not require a conclusion that he was subjected to adverse working conditions.

Long has argued that the extremely high turnover rate in Joyner's employees demonstrates that "reasonable employees" quit with a high degree of regularity and that this demonstrates that he met the good-reason-to-quit standard for unemployment benefits. The evidence presented by Long (and that which he proposed to present) indicates poor morale. Without clear evidence that frugality and management

expectations constituted outright hostility, we conclude that ULJ did not err in determining that the workplace issues Long complained of did not constitute a basis for the award of unemployment benefits.

Affirmed.

Dated: