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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1208**

Althea D. Galligan,
Relator,

vs.

Whalen Woods,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 15, 2008
Affirmed
Wright, Judge**

Minnesota Department of Employment and Economic Development
File No. 3279 07

Althea Galligan, 5312 Fairview Road, Baxter, MN 56425 (pro se relator)

Whalen Woods, 12811 Alfalfa Lane Southwest, Dillager, MN 56473 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101 (for respondent department)

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

UNPUBLISHED OPINION

WRIGHT, Judge

In this unemployment benefits action, relator challenges (1) the denial of her request for a new evidentiary hearing after failing to participate in the original hearing, and (2) the determination that she quit her employment without a good reason caused by her employer and, therefore, is disqualified from receiving unemployment benefits. We affirm.

FACTS

Relator Althea Galligan began employment with respondent Whalen Woods on December 5, 2005. She was promoted to manager overseeing the production department approximately 10 months later. On December 21, 2006, a new employee, Lori Slack, was hired to oversee the production department employees, including Galligan and other management personnel. When Galligan arrived at work on December 26, 2006, she “became very upset” after learning that Slack had distributed job assignments to the production crew, which was one of Galligan’s duties. Concluding that Slack had been hired to replace her, Galligan immediately turned in her badge and advised Slack that she was quitting.

Galligan applied for unemployment benefits with respondent Department of Employment and Economic Development (department). A department adjudicator determined that she is disqualified from receiving unemployment benefits because she voluntarily quit her employment without a good reason caused by her employer. Galligan subsequently appealed, and a telephonic hearing before an unemployment law

judge (ULJ) was scheduled for April 2, 2007, at 2:45 p.m. The department had given Galligan a phone number and directed her to call the department if she did not receive a call from the ULJ within 10 minutes after the hearing was scheduled to begin. When the ULJ called Galligan at the number she provided, the ULJ received a busy signal. After attempting to reach her for approximately 10 minutes, the ULJ determined that Galligan was not available and conducted the hearing without her. Based on the evidence submitted, the ULJ determined that Galligan is disqualified from receiving unemployment benefits because she quit without a good reason caused by her employer. Galligan requested reconsideration. The ULJ denied the request, finding that Galligan failed to establish good cause for missing the hearing. This certiorari appeal followed.

D E C I S I O N

We review a ULJ's decision to determine whether the findings, inferences, conclusion, or decision 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) (2006). In doing so, we consider whether, when the factual findings are viewed in the light most favorable to the decision, there is substantial support for them in the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Because credibility determinations are the exclusive province of the ULJ, we accord such determinations deference on appeal. *Id.*

I.

Galligan challenges the ULJ's denial of her request for a new evidentiary hearing based on her failure to participate in the scheduled hearing. When an applicant for unemployment benefits has good cause for failing to participate in the original hearing and requests reconsideration, the ULJ must set aside the original decision and hold an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(d) (2006). "Good cause" is defined as "a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing." *Id.* We review the ULJ's decision declining a request for an additional hearing for an abuse of discretion. *Skarhus*, 721 N.W.2d at 345.

Galligan's telephonic hearing was scheduled for 2:45 p.m. on April 2, 2007. Galligan was instructed that, if she did not answer the telephone or if the ULJ reached a busy signal, the ULJ would "make a decision based on the information available, including testimony from other participants." Galligan also was instructed to call the department if she did not "get a call within 10 minutes after the scheduled time." Galligan acknowledges that the ULJ had the correct telephone number. After calling Galligan's telephone number and reaching a busy signal for approximately 10 minutes and after not receiving a call from Galligan within 10 minutes of the scheduled hearing time, the ULJ concluded that Galligan was not available and would not be participating.

Galligan maintains that she "was literally waiting by the telephone" and did not receive a call. But even when accepted as true, Galligan has not demonstrated that she was prevented from participating despite having acted with the required due diligence.

Although Galligan was expected to call the department by 2:55 p.m. if she did not receive its call, Galligan did not call the department until 3:35 p.m., well after the scheduled time for her hearing. Without an explanation from Galligan for her failure to timely advise the department that she had not received the call, the ULJ was justified in finding that Galligan did not provide good cause for missing the evidentiary hearing. Thus, the ULJ's denial of Galligan's request for an additional evidentiary hearing was not an abuse of discretion.

II.

Galligan also challenges the ULJ's determination that she quit without a good reason caused by her employer. A person who quits employment is disqualified from receiving unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2006). Quitting employment "because of a good reason caused by the employer" is a statutory exception. *Id.*, subd. 1(1). What constitutes a "good reason [to quit] caused by the employer" is defined exclusively by statute. *Id.*, subd. 3(g) (2006). Under the statutory definition, the reason must be (1) "directly related to the employment and for which the employer is responsible," (2) adverse to the employee, and (3) one that "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2006). Whether an employee had a good reason to quit, presents a question of law, which we review de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

Galligan argues that she quit because Slack had been hired to replace her. But "[n]otification of discharge in the future" is expressly excluded from the statutory

definition of a good reason to quit caused by the employer. Minn. Stat. § 268.095, subd. 3(e) (2006). Here, Galligan had not received a discharge notice. Rather, she quit based on an unfounded assumption. Indeed, Galligan’s employer denied that Slack had been hired to replace her. When, as here, it was the employee’s choice to become unemployed rather than to remain employed and address any conflicts with a new supervisor, good cause to quit cannot be established. *See Trego v. Hennepin County Family Day Care Ass’n*, 409 N.W.2d 23, 26 (Minn. App. 1987) (concluding that employee who chose to quit rather than remain employed and make an effort to work out her problems with her new supervisor lacked good reason to quit).

Galligan also argues that she quit because her employer subjected her to a hostile work environment. Adverse working conditions constitute a good reason to quit but only if the employee has first complained to the employer and given the employer a reasonable opportunity to correct the adverse working conditions. Minn. Stat. § 268.095, subd. 3(c) (2006). Although Galligan asserts on appeal various factors contributing to the hostility of her work environment, the ULJ found that “[t]he evidence fails to demonstrate . . . that Galligan meaningfully conveyed these grievances to [her employer] at a time proximate to her decision to quit her employment.”¹

¹ Galligan also argues that she quit because of problems with some of her paychecks. But the facts supporting this argument were not submitted to the ULJ and, therefore, are not part of the record before us. *See* Minn. Stat. § 268.105, subs. 1(c) (requiring ULJ to render decision “upon the evidence obtained” at the evidentiary hearing), 2(c) (prohibiting ULJ from considering on reconsideration evidence not received at the hearing) (2006). We observe, however, that the paychecks Galligan references predate by several months the date that Galligan quit.

The evidence supports the ULJ's determination. Whalen Woods's administrator testified that she was surprised by Galligan's sudden decision to quit, describing it as a "total shock." And although Galligan argues that the evidence presented by her employer was not truthful, the evidence was not contested at the hearing. According deference to the ULJ's credibility determinations, we conclude that the ULJ's decision is supported by ample, uncontroverted evidence.

Affirmed.