STATE OF MINNESOTA
IN COURT OF APPEALS
A09-927

Debra Broms,
Relator,

vs.

U.S. Department of Agriculture/
Agricultural Marketing Service,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 2, 2010
Affirmed
Johnson, Judge

Department of Employment and Economic Development
File No. 21955575-3

Debra L. Broms, Savage, Minnesota (pro se relator)

U.S. Department of Agriculture, Agricultural Marketing Service, Minneapolis Financial Services Branch, Minneapolis, Minnesota (respondent)

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

Considered and decided by Toussaint, Chief Judge; Johnson, Judge; and Crippen, Judge.[*]

[*]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

JOHNSON, Judge

Debra Broms quit her job after her employer proposed to demote her to a lower-level position with a lesser salary. An unemployment law judge (ULJ) determined that Broms is ineligible to receive unemployment benefits because she quit without a good reason caused by her employer. The ULJ's determination is based on factual findings that the employer had merely proposed the demotion but had not yet made a decision to demote Broms, and that Broms chose to quit in order to avoid a blemish on her employment history. We conclude that substantial evidence supports the ULJ's findings and, therefore, affirm.

FACTS

Broms was employed by the United States Department of Agriculture (USDA) as an accountant in its Minneapolis Financial Services Branch office. She began her employment there in 2003. In late 2007, Broms's supervisor expressed dissatisfaction with her performance and began to impose various forms of progressive discipline. In July 2008, Broms's supervisor placed her on a performance improvement plan that required her to improve in the areas of customer service, certification of payments, and special projects.

On January 12, 2009, Thomas Grahek, the branch chief of the Minneapolis Financial Services Branch, met with Broms and gave her written notice of a proposal to demote her from her current position, a Level GS-12.6 position in the federal civil service scheme, to a Level GS-9.1 position. *See* 5 C.F.R. § 432.101-.107 (2009) (prescribing

procedures for demoting employee in federal civil service). At the time, Broms's annual salary in the Level GS-12.6 position was $83,383. She testified that the demotion would have reduced her salary by approximately $32,000, which was approximately 38% of her then-current salary. At the January 12 meeting, Grahek reviewed the demotion proposal with Broms and told her that it was a proposal. Broms acknowledged at the agency hearing that the demotion document was a proposal and that she had ten days in which to respond. The notice of proposal also stated that she could be represented by an attorney or other representative, that no decision would be made until all of the evidence was received, and that she would be given a written notice of decision with specific reasons for the decision. Mary Rucke, the assistant branch chief for employee relations, testified that the written decision also would include the employee's right to appeal to the United States Merit Systems Protection Board.

On January 22, 2009, Broms submitted a written response to the proposal and, simultaneously, submitted notice of her resignation, effective February 1, 2009. After receiving Broms's response and notice of resignation, Dave Root, the branch chief for employee relations, was concerned that Broms did not understand the process. He called Broms on several occasions but did not reach her. Root then asked Rucke to call Broms. Rucke did so but did not reach Broms and left her a voice-mail message stating that the notice of proposed demotion was merely a proposal and that no final decision had been made. Broms did not return Rucke's call.

After her resignation became effective, Broms applied for unemployment benefits. In February 2009, DEED denied her application because it determined that she quit her

job without a good reason caused by her employer. Broms filed an administrative appeal. A ULJ conducted a telephonic hearing. Five witnesses testified: Broms and four witnesses called by USDA. In March 2009, the ULJ determined that Broms was ineligible for unemployment benefits because the USDA had not decided whether Broms would be demoted and had not taken any action that would amount to a good reason for her to quit. Broms requested reconsideration, and the ULJ affirmed his prior ruling. Broms appeals by way of a writ of certiorari.

D E C I S I O N

Broms argues that the ULJ erred by determining that she is ineligible for unemployment benefits because she quit without a good reason caused by her employer. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are "unsupported by substantial evidence in view of the entire record." Minn. Stat. § 268.105, subd. 7(d) (2008). The evidentiary hearing is an evidence-gathering inquiry, not an adversarial contest, and is conducted without regard to any particular burden of proof. *Id*., subd. 1(b) (2008); *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee is ineligible for unemployment benefits based on employment misconduct is a question of law, which is subject to a *de novo* standard of review. *Id*.

An employee who quits employment is ineligible to receive unemployment benefits, unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2008). One exception to the general rule is the situation in which an employee quits for a good reason caused by the employer. *Id.*, subd. 1(1). A "good reason" 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." *Id.*, subd. 3(a) (2008).

Broms contends that she quit for a good reason caused by her employer because the demotion, from a Level GS-12.6 position to a Level GS-9.1 position, would have resulted in a significant decrease in her salary. Indeed, an employee who quits a job because of a significant decrease in compensation may be found to have quit for a good reason caused by the employer. *Compare Hessler v. Am. Television & Radio Co.*, 258 Minn. 541, 549, 104 N.W.2d 876, 882 (1960) (holding that employees did not quit with good reason because employer reduced pay by 2-4%); *Dachel v. Ortho Met., Inc.*, 528 N.W.2d 268, 270 (Minn. App. 1995) (holding that employee did not quit with good reason because employer reduced pay by 10%), *with Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 535-36, 235 N.W.2d 616, 616-17 (1975) (holding that employee quit with good reason because employer reduced pay by 25%); *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 419 (Minn. App. 2003) (holding that employee quit with good reason because she was demoted to position with approximately 16% less pay and disadvantageous hours); *cf. Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 83-85

(Minn. 1981) (holding that employees were eligible for unemployment benefits because employer's 21-26% reduction in wages was a lockout, not a strike).

But the ULJ rejected Broms's argument on a different ground. The ULJ found that the USDA "had not yet made any decision about whether or not Broms would be demoted." The ULJ explained, "When Broms quit, the employer had not taken the kind of adverse action that would have caused the average, reasonable worker to quit and become unemployed rather than remaining in the employment." These findings by the ULJ are supported by the evidentiary record in several respects. First, the written proposal for a demotion states:

> This notice constitutes a proposal to demote you from a GS 0510/12/05 Accountant to a GS 0510/09/01 Accountant no sooner than thirty (30) calendar days from your receipt of this notice. No decision will be rendered on this proposed notice until the period of time for your response has expired.

Second, Broms herself testified that she was given a proposal for demotion and, in response to precise questioning by the ULJ, acknowledged that it was a proposal and not a final decision. Third, Grahek testified that he had reviewed with Broms the fact that the document was merely a proposal and that Broms could have provided feedback to the decisionmaker. Fourth, Rucke testified that she left a voice-mail message for Broms stating that the notice was a proposal and that the USDA had not made a final decision. Thus, the record contains substantial evidence supporting the ULJ's finding that the USDA did not demote Broms before she quit.

Broms challenges the ULJ's finding that the USDA did not make a decision to demote her before her resignation. First, she contends that she actually was demoted

during the January 12, 2009, meeting at which she was presented with the demotion proposal. More specifically, she asserts, "I was informed that I was being demoted," and, "I left the meeting with the understanding I was being demoted . . . ." Broms's contention is contradicted by the evidence described in the previous paragraph. To the extent that Broms attacks the credibility of the USDA's witnesses, we must defer to the ULJ's findings. *Skarhus*, 721 N.W.2d at 344. Furthermore, Broms's present insistence that she was demoted at the January 12 meeting is inconsistent with her own testimony at the agency hearing that she was given a proposal.

Second, Broms contends that a demotion "was informally put in place" before she submitted her resignation. In her request for reconsideration, she argued that management changed her duties and responsibilities, thus indicating that a decision had already been made to demote her. The ULJ rejected the argument, stating that such conduct did not indicate a final decision and that other evidence supported the conclusion that the USDA had not made a decision to demote her. The argument by Broms in her *pro se* brief does not overcome the evidence on which the ULJ relied so as to conclusively demonstrate that the USDA had made a decision to demote Broms. Furthermore, Broms's contention is inconsistent with her testimony that she quit because she was aware that she could be demoted at any time and did not want her employment record to include a demotion.

Third, Broms contends that the USDA effectively demoted her because it did not "prevent [her] resignation." More specifically, she contends that Laura McKenzie, who was to be the decisionmaker, "could have notified me that a decision had not been made."

This contention is inconsistent with the evidence that Root and Rucke made several attempts to communicate that very fact to Broms via telephone calls and a voice-mail message.

Fourth, Broms contends that the ULJ's determination is flawed because McKenzie did not participate in the telephonic hearing. The hearing record reflects that McKenzie did not participate because she was ill that day. Other USDA employees testified about their discussions with McKenzie concerning the demotion proposal. Reliable hearsay is admissible in an unemployment appeal hearing if the evidence has probative value and "is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2009). The ULJ provided a fair hearing and ensured that both parties presented all of the evidence that they wished to present.

Fifth, Broms contends that she had good reason to quit because she was subjected to "harassment" and "an intimidating, hostile, or offensive working environment." Broms did not make such an argument to the ULJ and, thus, cannot raise it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We note that Broms's allegation appears to arise out of the disciplinary actions her supervisor imposed, including the performance improvement plan, which Broms states was "very stressful" and "unbearable." It also appears that Broms did not comply with the statutory requirement that she "complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a

good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(c) (2008).

The ULJ did not err by finding that the USDA did not demote Broms before her resignation and by concluding that Broms quit without a good reason caused by the employer. The ULJ found that Broms "was concerned that she would be demoted and that she did not want this demotion on her work record." An employee who resigns a job to avoid an involuntary termination does not quit for a good reason caused by the employer. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985); *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 891 (Minn. App. 1984); *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-358 (Minn. App. 1983). Likewise, an employee who resigns a job to avoid a demotion does not quit for a good reason caused by the employer. *See Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 801-02 (Minn. App. 2005) (holding that employee did not have good reason to quit due to concern about possible loss of income after transfer to different worksite), *review denied* (Minn. July 19, 2005). In light of the ULJ's finding that Broms resigned to avoid being demoted, the ULJ properly concluded that she did not have a good reason to quit caused by the employer.

In sum, substantial evidence supports the ULJ's determination that Broms did not quit her job for a good reason caused by the USDA. Thus, she is ineligible for unemployment benefits.

Affirmed.