STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2170

Barbara Jones,
Relator,

vs.

S J & F Enterprises Inc. (FM),
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 31, 2010
Affirmed
Klaphake, Judge

Department of Employment and Economic Development
File No. 23128856-3

Barbara J. Jones, Dennison, Minnesota (pro se relator)

Kelly C. Dohm, Melchert, Hubert, Sjodin, PLLP, Waconia, Minnesota (for respondent S J & F Enterprises, Inc.)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and Schellhas, Judge.

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

KLAPHAKE, Judge

Relator Barbara Jones challenges the unemployment law judge's (ULJ) decision that she was ineligible to receive unemployment benefits because she quit her inventory control job with S J & F Enterprises, Inc. (S J & F) without good cause. Because there is substantial evidence to support the ULJ's decision that relator quit employment without good cause attributable to S J & F, we affirm.

D E C I S I O N

This court will affirm a ULJ's decision unless it violates the constitution, exceeds statutory authority or the department's jurisdiction, is based on unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (Supp. 2009). An unemployment benefits applicant is eligible to receive benefits if the applicant "quit the employment because of a good reason caused by the employer," *id.*, subd. 1(1), which is defined to include a reason "that is directly related to the employment and for which the employer is responsible," "that is adverse to the worker," and "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) (2008). This court defers to a ULJ's factual findings based on credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator makes the following arguments about why she had a valid basis for quitting her employment: (1) she had a verbal agreement with S J & F that she would receive 30-day and 90-day reviews and pay raises at those reviews, and the company breached that agreement; (2) S J & F unnecessarily changed her work duties by assigning her extra work; (3) the fire door that served as access to her office was an unsafe working condition; and (4) the company failed to respond to her claim of sexual harassment.

Alleged Verbal Employment Contract

Edward Salonek, the company controller who hired relator and was her supervisor, testified that although relator was hired to work in inventory control, she agreed to increase her duties, with commensurate pay, in January 2009 in order to take on occasional receptionist and bookkeeping duties. Salonek also testified that the company sent relator an employment offer letter contemporaneously with her hiring in October 2008 that provided the terms of her employment, including rate of pay, insurance benefits, vacation time, sick time, and personal time. Salonek further testified that he told relator at the time that "there'd be a 30 day review, a 90 day review," and that raises could be "up to $1 [per hour]." Salonek also stated that he later increased relator's hours and paid her overtime at a time when the company had initiated a pay freeze and that she was the only employee to receive overtime pay. Contrary to Salonek's testimony, relator claims that the company guaranteed her raises of $1 per hour at her 30-day and 90-day reviews.

An employee may have a good reason to quit employment when an employer breaches a term of an employment agreement. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550,

552-53 (Minn. App. 2003) (ruling employer breached employment agreement by failing to give employee a promised raise), *review denied* (Minn. Sept. 24, 2003). The ULJ credited Salonek's testimony that relator did not have a verbal agreement that she would receive pay raises at the time of her performance reviews. Salonek's statement that pay raises could be "up to $1" shows that pay raises were discretionary, and relator signed her 30-day review that indicated she would not be receiving a pay raise. Further, although relator received her 30-day review late and her 90-day review verbally rather than in writing, these defects, without more, do not provide relator with a legal basis for quitting her job. "The circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances." *Wood v. Menard, Inc.*, 490 N.W.2d 441, 443 (Minn. App. 1992) (quotation omitted). To the extent that relator's testimony differed from Salonek's, the ULJ's findings suggest that it found Salonek's testimony more credible, and Salonek's testimony was supported by documentation in the form of company records of relator's employment.

Changes in Workload

Relator also argues that her working conditions became unbearable because she was asked to do extra work, and she could not complete her work in a timely fashion. An employee may have good reason to quit if an employer makes unreasonable demands on the applicant. *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (holding applicant had good reason to quit when employee's work hours more than doubled during a two-year period, compelling the conclusion that the employer made

unreasonable demands of the employee that no person could be expected to meet). This claim is also contradicted by Salonek's testimony. Salonek testified that relator received favorable performance reviews, that she was told only to get done in a day what she could, and that she was given increased hours and was the only employee authorized to receive overtime pay. The record also suggests that the increased workload may have been temporary, and Salonek stated that the work was not borne by relator alone. Further, relator did not claim that she was unqualified or unable to do the additional work. We conclude that this testimony provides substantial evidence to support the ULJ's decision that relator's increased workload did not provide her with a basis to quit her employment.

Fire Door

An applicant who seeks unemployment benefits based on a claim of adverse working conditions must "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). Relator testified that the latch to a door in her office was broken and that the door sometimes hit her if she was standing in front of it when employees walked through the door. S J & F offered evidence that the door was required to be a fire door "by code" and that it therefore could not contain a window and needed a specific type of latch. Salonek testified that he knew that the company changed the door handle, including the latch, before relator quit. On this evidence, we conclude that the condition of the door

did not qualify as an adverse working condition that would cause a reasonable employee to quit.

Sexual Harassment Claim

Sexual harassment, for purposes of the unemployment compensation statute, includes, among other conduct, "conduct or communication of a sexual nature" that "has the purpose or effect of substantially interfering with an applicant's work performance or creating an intimidating, hostile, or offensive working environment." *Id.*, subd. 3(f), 3(f)(3) (2008). Relator claims that she was sexually harassed, but she failed to name even one instance of harassment, and her testimony was contradicted by her purported eyewitness co-worker, Garner Diers, who observed no instances of sexual harassment.

The reasonable worker standard, which applies in unemployment compensation matters, is applied to the average person, rather than the hypersensitive. *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). As relator offered no example of sexual harassment other than vague allegations that are contradicted by the testimony of another witness, the ULJ did not err by finding that relator did not have a reasonable basis to quit her employment because of sexual harassment. *See Skarhus*, 721 N.W.2d at 344 (giving deference to the ULJ's credibility determinations).

Finally, although the ULJ addressed the reasons advanced by relator for her quitting her employment, the record also establishes that relator's true motivation for quitting was that the company had garnished her wages for tax purposes. According to Salonek, when relator became upset about the wage garnishment, he intended to

"work with her" and was going to give her a raise, but she abruptly quit. Carla Ernhart, who worked in inventory control with relator, testified that she was with relator when she quit and that relator's quit was in response to the company's garnishment of her wages. According to Ernhart, relator "was crying and angry and said she quit and she had no idea that [the wage garnishment] was happening this check and she was leaving." This testimony also supports the ULJ's decision.

Affirmed.