STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2233

Lisa Lor, Relator,

vs.

Hmong American Mutual Assistance Association Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 31, 2010
Affirmed
Schellhas, Judge

Department of Employment and Economic Development
Agency File No. 22415509-5

Lisa Lor, St. Paul, Minnesota (pro se relator)

Hmong American Mutual Assistance Assoc., Minneapolis, Minnesota (respondent)

Lee B. Nelson, Amy R. Lawler, 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

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) upon reconsideration that she is ineligible for benefits. Relator argues that (1) the ULJ should not have granted her employer's request for reconsideration; (2) she did not quit, but was discharged; (3) even if she did quit, she had good reasons caused by the employer for doing so; and (4) the ULJ improperly relied on documents outside the record. We affirm.

FACTS

Respondent Hmong American Mutual Assistance Association Inc. (HAMAA) employed relator Lisa Lor as a janitor at one of its properties, New Millennium Academy (NMA), a charter school. HAMAA's policy prohibited charter-school janitors from taking vacation during the school year. Despite the policy, in November 2008, relator asked Xang Vang, HAMAA's executive director, for permission to take vacation so that she could go to Laos from December 8, 2008, to January 14, 2009, for her niece's wedding. Vang told relator to ask her immediate supervisor, Nao Tou Xiong. Xiong signed relator's vacation-request form on December 3, 2008, but did not expressly mark on the form whether the request was approved or disapproved. Relator then brought the signed form back to Vang's office, and heard nothing further before leaving for Laos on December 8.

While relator was away, Vang sent her a letter dismissing her from her position at NMA, effective January 31, 2009, for taking a vacation during the school year without proper approval. But HAMAA did not terminate relator's employment; instead, it

transferred her to another school, Long Tieng Academy (LTA), which was located nearby or in the same building as NMA.

According to Vang, after relator worked a week or so at LTA, she "walk[ed] off the job." HAMAA paid relator for 32 hours of work during the first pay period in February. But relator claims that she only volunteered her time for a few days at LTA, working without pay, and then "was laid off." She claims that in early February, HAMAA told her that it could not afford to employ her at LTA, that HAMAA would help her find a job outside the organization, and that she should apply for unemployment benefits. She testified that she was only placed at LTA as a stop-gap measure while HAMAA helped her find an outside job. She claims that she received conflicting instruction from different individuals at HAMAA as to whether she could continue working or not. Relator's last day at LTA was February 5, 2009.

Relator applied for unemployment benefits, respondent Minnesota Department of Employment and Economic Development (DEED) determined her to be ineligible, and relator appealed to an unemployment-law judge (ULJ). At a hearing on June 23, the ULJ did not take any documents into the record because relator did not have the documents in front of her, and also did not take any testimony relating to relator's employment at LTA, apparently believing that the only issue before him was relator's separation from NMA, and that relator's employment with LTA was a separate issue. On June 24, the ULJ decided relator was eligible for benefits because she was terminated from NMA on January 31, and had not committed employee misconduct by taking vacation after her supervisor signed the vacation-request slip.

HAMAA requested reconsideration, submitting evidence that relator was not actually terminated on January 31, but was in fact only transferred to LTA. In response, the ULJ set aside his June 24 decision and ordered a new hearing, which was held October 2. At the October 2 hearing, the ULJ again refused to take documentary evidence into the record on the basis that relator could not read or write English, but took oral testimony on the issue of relator's transfer to, work at, and separation from LTA.

In an October 12 decision, the ULJ found that relator was employed by HAMAA through February 6, when she quit without good reason caused by the employer, and she was therefore ineligible for unemployment benefits. The ULJ denied relator's request for reconsideration. This certiorari appeal follows.

D E C I S I O N

We may reverse or modify a ULJ's decision if the relator's rights were prejudiced because the ULJ's findings, inferences, conclusion, or decision were, among other grounds, affected by an error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2008). We give deference to the ULJ's credibility determinations, view the ULJ's findings in the light most favorable to the decision, and will not disturb those findings if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review legal questions de novo. *Id.*

Grant of Request for Reconsideration

Relator maintains that the ULJ's decision following the June 23 hearing was legally and factually correct, essentially arguing that the ULJ should not have ordered a new hearing based on HAMAA's request for reconsideration.

When a party requests reconsideration of a ULJ's decision, the ULJ must order a new evidentiary hearing if the party "shows that evidence which was not submitted at the evidentiary hearing . . . would likely change the outcome of the decision and there was good cause for not having previously submitted the evidence." Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009). We defer to a ULJ's decision to grant or deny an evidentiary hearing and will reverse only for an abuse of discretion. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (stating that this court defers to ULJ decision to deny request for new evidentiary hearing under subdivision 2(c)); *Skarhus*, 721 N.W.2d at 345 (stating that this court will reverse decision denying new evidentiary hearing only for abuse of discretion); *Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d 28, 30 (Minn. App. 2004) (stating that "Commissioner is accorded deference when exercising discretion to decide remand requests").

Here, HAMAA submitted evidence in support of its request for reconsideration suggesting that relator's employment continued beyond the apparent January 31 termination date, and that she quit in February. If received into evidence, this additional evidence would likely change the outcome of the decision because an employee who quits without good reason caused by the employer is generally ineligible for benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). HAMAA had good cause for not previously

submitting this evidence—it attempted to do so at the original hearing but the ULJ disallowed it. The ULJ therefore did not abuse his discretion by granting an additional hearing to explore the issue of relator's separation from LTA.

Quit or Discharge

Relator asserts that she was terminated effective January 31, and only worked at LTA as a volunteer without pay in early February while LTA attempted to find funding to pay her. According to relator, "This had absolutely no ties to HAMAA as they were simply a former disgruntled employer who wanted me off the same premises that HAMAA, LTA and [NMA] all shared."

Generally, an applicant who quit employment is ineligible for unemployment benefits, while an applicant who was discharged for reasons other than employment misconduct is eligible. Minn. Stat. § 268.095, subds. 1 (Supp. 2009), 4(1) (2008). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (Supp. 2009). "A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5(a) (2008). "A layoff because of lack of work is considered a discharge." *Id.* Whether an employee quit or was discharged is a question of fact for the ULJ. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Here, the ULJ found that relator's employment with HAMAA continued when she was transferred to LTA, and that relator quit by "walking off the job without comment"

after working there for four days. This finding is supported by Vang's testimony that relator "walk[ed] off the job," which the ULJ found more credible than relator's testimony to the contrary. The ULJ explained:

> The parties provided conflicting testimony. [Relator's] version of events was inconsistent and contradictory; for example, at one point she testified that HAMAA told her that she would receive one week of pay if she stopped reporting to work and at another point she testified that [LTA's] principal told her there was no more money so she stopped reporting to work. For this reason, the [ULJ] found the more consistent version of events offered by HAMAA's representative [Vang] to be more likely than [relator's] testimony to the contrary.

Because the ULJ's finding that relator quit is supported by the evidence, we will not disturb it.

Good Reason to Quit Caused by Employer

Applicants who quit their employment may still be eligible for unemployment benefits if they quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). What constitutes a good reason caused by the employer is defined exclusively by statute. Minn. Stat. § 268.095, subd. 3(g) (2008). The statute provides:

> A good reason caused by the employer for quitting 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.

Minn. Stat. § 268.095, subd. 3(a) (2008). Whether an applicant's quit was because of a good reason caused by the employer is a question of law that we review de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

Relator suggested at the hearing that she was working unpaid at LTA. Vang testified that relator was paid for her work at LTA but walked off the job. DEED concedes that an employee who is not being paid would have a good reason to quit caused by the employer. The ULJ did not make an express finding as to whether relator was paid for her work at LTA. However, as mentioned above, the ULJ credited Vang's testimony and discredited relator's, and concluded that HAMAA had done nothing that would compel an average reasonable worker to quit and become unemployed rather than remain in the employment, implicitly finding that relator was paid per Vang's testimony. Based on this implied finding, the ULJ correctly determined that relator did not have a good reason to quit caused by the employer on this basis.

On appeal, relator also argues that she had "no other choice but to leave the premises" because she was being "harassed by former co-workers at HAMAA—'. . . some said I could stay, some told me, you know, to leave.'" Relator argues that when she tried to bring this up at the first hearing, the ULJ did not allow her to do so because he believed testimony related to the employment at LTA to be irrelevant. But the ULJ held a second hearing for the express purpose of exploring the circumstances surrounding relator's separation from LTA, and relator made no mention of being harassed by coworkers at that hearing—her testimony that "some said I could stay, some told me, you know, to leave" was made in the context of whether HAMAA could afford to keep her on

at LTA, without reference to any harassing behavior. Because the record does not suggest that relator was harassed by coworkers, it cannot support a conclusion that relator had a good reason to quit caused by the employer because she was being harassed.

The ULJ correctly concluded that relator did not have a good reason to quit caused by the employer.

Documents Outside the Record

Relator also argues that documents submitted by HAMAA "created false inferences and conclusions that misconstrue[d] the facts and violate[d] [relator's] substantial rights," even though no documents were admitted into the record at either hearing. As discussed above, the ULJ's findings are supported by the record, which consists of the oral testimony at the two hearings. Nothing in the ULJ's findings reflects that the ULJ based his decision on any documents that were not admitted. Therefore, relator is not entitled to relief on this basis.

Affirmed.