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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1008**

Rebecca Kanner,
Relator,

vs.

National Marrow Donor Program,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed March 8, 2011
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 23873331-3

Rebecca Kanner, St. Paul, Minnesota (pro se relator)

National Marrow Donor Program, Minneapolis, Minnesota (respondent)

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

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Relator appeals an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment-compensation benefits because she quit her employment. Because we conclude that relator does not qualify for any of the exceptions to ineligibility, we affirm.

FACTS

Relator Rebecca Kanner worked full-time as a program interviewer for the National Marrow Donor Program (NMDP) from March 3, 2008, to November 6, 2009, when she quit the employment. Kanner offers three reasons for quitting: (1) to care for the medical needs of herself and her family member; (2) to avoid discharge from the employment and conflicts with her supervisor; and (3) to protect herself from individuals who were harassing her.

Medical needs of Kanner and her family member

In September 2008, Kanner informed her supervisor that a family member was seriously ill and requested permission to work from home to care for that family member.¹ Kanner's supervisor advised her that she would consider the request but that they would need to develop a method for verifying the calls Kanner made while she was working from home. Kanner did not follow up with her supervisor after this meeting.

¹ To protect the privacy of Kanner's family member, who is not a party to this case, we do not identify the family member's relation to Kanner or the family member's illness.

Almost one year later, in June 2009, Kanner was diagnosed with a mood disorder. Kanner did not advise NMDP about her condition or request any leave or accommodations to care for herself. Nor did Kanner's physician tell her that she needed to leave her employment.

In October 2009, Kanner's family member's illness worsened, and the family member was hospitalized. Kanner did not inform NMDP of the deterioration in her family member's condition or her family member's need for constant care. Nor did Kanner renew her request to work from home so that she could care for her family member.

NMDP has a family and medical leave policy, which is set forth in its employee handbook and is reviewed during its annual handbook trainings. Kanner acknowledged receiving a copy of the handbook but indicated that she had not reviewed it and did not know about the leave policy. Before quitting, Kanner did not request any type of leave.

Avoidance of discharge and conflicts with supervisor

Kanner testified that, in August 2009, she knew that her supervisor was thinking about terminating her. Kanner's supervisor confirmed that she met with Kanner in August 2009 but denied initiating the termination process. Kanner's supervisor testified that, during this meeting, she outlined Kanner's job requirements and expectations, stated that Kanner's progress would be measured after three months, and explained that Kanner would receive a written warning if she was not meeting expectations by that point.

In her motion for reconsideration, Kanner added that she had a number of conflicts with her supervisor because the supervisor did not provide the information that Kanner

needed to perform her tasks, did not update Kanner on projects, and was contemptuous of Kanner's personal and work-related concerns.

Harassment

In July 2009, Kanner advised the NMDP human resources manager that she was being "bothered by some people" (who did not work at NMDP) and that she was "worried that they would be able to easily figure out where [she] worked." The human resources manager informed Kanner that building security could escort her to and from her vehicle, but warned her that she should not rely upon building security to keep these individuals out of the building.

Application for unemployment benefits

After quitting employment, Kanner applied for unemployment-insurance benefits, and a Minnesota Department of Employment and Economic Development (DEED) adjudicator determined that she was ineligible because she quit employment based on a notice of possible discharge. Kanner appealed the ineligibility determination. A ULJ heard testimony from Kanner, her supervisor, and a human resources representative. The ULJ determined that Kanner had quit for reasons relating to her own health and the health of her family member. But the ULJ concluded that the medical-necessity and care-of-a-family-member exceptions to ineligibility did not apply because Kanner did not request an accommodation from NMDP before quitting. Kanner filed a request for reconsideration, which the ULJ denied. This certiorari appeal follows.

DECISION

This court may remand, reverse, or modify a decision of the ULJ if substantial rights of the applicant were prejudiced because the findings, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). We review a ULJ's factual findings in the light most favorable to the decision and will not disturb them when they are sustained by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review de novo a ULJ's determination that an applicant is ineligible for benefits. *Sykes v. NW Airlines*, 789 N.W.2d 253, 255 (Minn. App. 2010). A person who quits employment is ordinarily ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009).

I

Initially, Kanner contends that she was unable to fully present her case at the hearing because she did not have an attorney and because she was nervous. An unemployment hearing is an “evidence gathering inquiry” where the ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). 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 (2009). The ULJ questioned Kanner extensively about her stated reasons for quitting and asked her if she wanted to add anything before he questioned NMDP’s witnesses, and again, before proceeding to closing arguments. The ULJ fulfilled his obligation to ensure that the facts were clearly and fully developed.

II

Kanner contends that her mood disorder necessitated her quit. An applicant may be eligible for unemployment benefits if she quit the employment “because the applicant’s serious illness or injury made it medically necessary that the applicant quit.” Minn. Stat. § 268.095, subd. 1(7)(i). But “[t]his exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*, subd. 1(7). There is no evidence that Kanner’s quit was medically necessary, let alone that Kanner notified NMDP of her condition, requested an accommodation, or was denied such an accommodation. Thus, Kanner does not qualify for the medical-necessity exception. *See id.*; *cf. Madsen v. Adam Corp.*, 647 N.W.2d 35, 38–39 (Minn. App. 2002) (concluding that medical-necessity exception applied when applicant notified employer of her medical condition and requested transfer to a position that would not aggravate it).

Kanner further contends that she needed to quit to care for her family member. An applicant may be eligible for unemployment benefits if she quit the employment “to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant.” Minn. Stat. § 268.095, subd. 1(7)(ii). But like the medical-necessity exception, the care-of-a-family member exception “only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*, subd. 1(7). In September 2008, Kanner informed her supervisor that her family member was seriously ill and requested permission to work from home to care for that family member. But, as the ULJ noted,

“[a]lthough the statute does not state when an applicant must inform an employer of a medical problem and request accommodation, it would seem that such a request would have to be made somewhat contemporaneously with the separation from employment.” We agree. Kanner made this request over a year before she quit employment, and she did not follow up on the request or renew it before she opted to quit. Thus, because Kanner failed to make any requests to accommodate her family member’s serious illness that were contemporaneous with her decision to quit, she does not qualify for the care-of-a-family-member exception. *See* Minn. Stat. § 268.095, subd. 1(7)(ii).²

III

An employee may also be eligible for unemployment benefits if she quit “because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason caused by the employer is one that is adverse to the worker and directly related to the employment, for which the employer is responsible. Minn. Stat. § 268.095, subd. 3(a) (2008). It must also be a reason that “would compel an average, reasonable worker to quit rather than remain in the employment.” *Id.* Whether an employee has quit for a good reason caused by the employer is a question of fact. *Id.*, subd. 3(b). Kanner argues that she quit because her supervisor was beginning the termination process, because she did not get along with her supervisor, and because she was being harassed.

² We also note that the ULJ’s decision can be sustained on the alternative ground that Kanner’s family member is not an “immediate family member,” as that term is defined by the unemployment statute. *See* Minn. Stat. § 268.035, subd. 19a (Supp. 2009) (defining an “immediate family member” as an “applicant’s spouse, parent, stepparent, son or daughter, stepson or stepdaughter, or grandson or granddaughter”).

Initially, Kanner contends that she quit because her supervisor had initiated the termination process. The ULJ did not make any specific findings resolving the conflicting testimony of Kanner and her supervisor as to whether Kanner's supervisor initiated the termination process in August 2009. But even if we were to assume that the ULJ credited Kanner's testimony and discounted her supervisor's testimony, Kanner's testimony would be insufficient to establish that she quit for a good reason attributable to the employer. "Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting." *Id.*, subd. 3(e).

Additionally, in her motion for reconsideration, Kanner stated that her supervisor did not enable Kanner to perform her job properly and was insensitive to Kanner's personal and work-related concerns. The ULJ declined to consider this evidence because Kanner presented no good justification for failing to present it at the hearing, and Kanner has not appealed this determination. But the ULJ further stated that even if he had considered the additional evidence, it would have been insufficient to change his decision. This determination is not erroneous. Personality conflicts do not constitute a good reason to quit attributable to the employer. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that employee's conflicts with employer did not constitute good reason to quit attributable to employer).

Finally, Kanner appears to contend that she quit the employment because she was being harassed by individuals outside of work. The ULJ found that Kanner had informed NMDP about the harassment but did not make any legal determinations based on these

findings either in his initial decision or in his decision on reconsideration. Regardless, this circumstance does not constitute a good reason to quit attributable to the employer. The individuals who were bothering Kanner were not employees of NMDP, and there is no indication that NMDP owed any duty to protect Kanner from these individuals. Nonetheless, NMDP's human resources manager offered to have building security escort Kanner to and from the building and warned Kanner of the building security's limitations, namely that they could not necessarily keep the people who were harassing her out of the building. The human resources manager's actions in this regard do not constitute a good reason to quit attributable to the employer.

Affirmed.