Opinion issued September 9, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00727-CV

MICHELLE GREEN, Appellant

V.

TEXAS WORKFORCE COMMISSION AND TF ADMINISTRATION, LLC, Appellees

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On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case No. 2020-01448

O P I N I O N

Michelle Green appeals the trial court's ruling granting summary judgment to her employer, TF Administration, LLC (TFA), and Texas Workforce Commission after the TWC denied her claim for unemployment benefits. In her sole issue, Green

contends that the trial court erred by granting summary judgment to TWC and TFA because substantial evidence did not support TWC's decision. We affirm.

Background

TFA provides administrative and management services to a residential home in Houston, Texas and employs the domestic and household staff to run the home and care for the family. In April 2017, TFA hired Green as a personal assistant to T. Friedkin.

On the morning of December 25, 2018, Green sent a text message to Friedkin and advised her that she would not be reporting to work as scheduled that evening due to her father's health concerns. Friedkin expected Green to report to work to help her pack for her international vacation, which was scheduled from December 26, 2018 through January 6, 2019.

Green did not report to work. The next day, Green sent multiple text messages to Friedkin and asked if she was supposed to work because TFA did not provide her with her work schedule. Friedkin did not respond.

Green alleged that she visited Friedkin's home, even though she knew that Friedkin had left the country. Green alleged that a TFA employee told her that she was not authorized to return until she spoke with Friedkin. Assuming that TFA had terminated her employment based on her removal from the work schedule,

Friedkin's lack of communication, and the denial of entry to her workplace, Green sought unemployment benefits from TWC the next day.

The TWC denied Green's claim for unemployment benefits, finding that Green voluntarily resigned from her job "without good cause connected with the work." Green appealed that decision to the TWC Appeal Tribunal, arguing that TFA had fired her. The Tribunal reversed TWC's decision, concluding that the "work separation was initiated by the employer" and that TFA discharged Green for "reasons other than misconduct." The Tribunal determined that it was not unreasonable for Green to conclude that TFA fired her because she "drove to the job site and was denied admittance," TFA "removed [Green] from the schedule," and she "attempted to contact Friedkin who did not respond." The Tribunal approved Green for unemployment benefits. *See* TEX. LAB. CODE § 207.044 ("Discharge for Misconduct").

TFA appealed the Tribunal's ruling. The TWC determined that the Tribunal misapplied the law and held that Green voluntarily quit her TFA job without good cause. The TWC explained that Green did not have good cause to quit her job because she knew Friedkin was on vacation:

> The claimant believed she was discharged when the employer failed to respond to her for two days, because she was turned away at the gate, and because she was not scheduled to work. Therefore, the claimant quit on December 28, 2018 when she filed her initial claim for benefits. The employer's lack of communication and the claimant's lack of work

> during a period when the claimant had notice the employer was on vacation does not give the claimant good cause to quit.

The TWC reversed the Tribunal's ruling and disqualified Green from unemployment benefits. *See* TEX. LAB. CODE § 207.045 ("Voluntarily Leaving Work").

Green petitioned the district court seeking judicial review of the denial of her benefits. *See* TEX. LAB. CODE § 212.201(a). The TWC and TFA filed a joint motion for summary judgment, arguing that Green abandoned her job. Green cross moved for summary judgment, arguing that TFA had terminated her.

The trial court granted summary judgment to TWC and TFA and denied Green's cross motion for summary judgment, upholding the TWC's decision. After all of Green's post-judgment motions were denied by order or overruled by operation of law, Green appealed.

Challenge to TWC Ruling

Green contends that the trial court erred in denying her motion for summary judgment and granting TWC and TFA's joint motion for summary judgment because the TWC's decision denying Green's unemployment benefits was unsupported by substantial evidence.

A. Summary judgment review

We review the trial court's grant of summary judgment de novo. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018). We consider the evidence presented in the light most favorable to the nonmovant, crediting evidence favorable to the

nonmovant if reasonable jurors could and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). We review both parties' summary judgment evidence, determine all issues presented, and render the judgment that the trial court should have rendered. *Fallon v. Univ. of Tex. MD Anderson Cancer Ctr.*, 586 S.W.3d 37, 46 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (en banc). We indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018). The movant bears the burden of showing that "no genuine issue of material fact exists and that it is entitled to judgment as a matter of law." *Id.* (citing TEX. R. CIV. P. 166a(c)).

B. Substantial evidence review

The trial court's review of a TWC decision is by "trial de novo based on the substantial evidence rule." TEX. LAB. CODE § 212.202(a). Under this standard, appellate courts presume the TWC's decision is valid, and the party seeking to set the TWC's decision aside has the burden to show it was unsupported by substantial evidence, which is more than a scintilla, but less than a preponderance. *Tex. Workforce Comm'n v. Wichita Cnty.*, 548 S.W.3d 489, 492 n.2 (Tex. 2018); *Kaup v. Tex. Workforce Comm'n*, 456 S.W.3d 289, 295 (Tex. App.—Houston [1st Dist.] 2014, no pet.). In other words, we may only set aside the TWC's decision if it was

"made without regard to the law or the facts and therefore was unreasonable, arbitrary, or capricious." *Mercer v. Ross*, 701 S.W.2d 830, 831 (Tex. 1986). Whether TWC's decision was supported by substantial evidence is a question of law. *Tex. Workforce Comm'n v. City of Hous.*, 274 S.W.3d 263, 267 (Tex. App.—Houston [1st Dist.] 2008, no pet.).

Under the substantial evidence rule, the court must determine "whether the evidence introduced before the trial court shows facts in existence at the time of the [TWC's] decision that reasonably support the decision." *Collingsworth Gen. Hosp. v. Hunnicutt*, 988 S.W.2d 706, 708 (Tex. 1998). We must uphold the TWC's decision if the evidence as a whole is such that reasonable minds could have reached the same conclusion. *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 186 (Tex. 1994); *City of Hous.*, 274 S.W.3d at 267. "If substantial evidence would support either affirmative or negative findings, we must uphold the agency decision and resolve any conflicts in favor of the agency decision." *Farris v. Fort Bend Indep. Sch. Dist.*, 27 S.W.3d 307, 312 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (citing *Auto Convoy Co. v. R.R. Comm'n of Tex.*, 507 S.W.2d 718, 722 (Tex. 1974)). We cannot overturn the TWC's decision "merely because testimony was conflicting or disputed or because it did not compel the agency's decision." *Scally v. Tex. State Bd. of Med. Exam'rs*, 351 S.W.3d 434, 441 (Tex. App.—Austin 2011, pet. denied)

(citing *Firemen's & Policemen's Civ. Serv. Comm'n v. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984)).

"Resolution of factual conflicts and ambiguities is the province of the [TWC] and it is the aim of the substantial evidence rule to protect that function." *Brinkmeyer*, 662 S.W.2d at 956. Our focus is whether the TWC made a reasonable decision, not a correct one. *See id*. "We review the trial court's summary judgment by comparing the TWC decision with the evidence presented to the trial court and the governing law." *Kaup*, 456 S.W.3d at 295 (internal quotation omitted)).

C. Applicable law

Section 207.045(a) of the Labor Code provides that "[a]n individual is disqualified for benefits if the individual left the individual's last work voluntarily without good cause connected with the individual's work." TEX. LAB. CODE § 207.045(a). The TWC defines "good cause connected with the work" as "cause, related to work, as would induce a person who is genuinely interested in retaining work to nevertheless leave the job." *Uranga v. Tex. Workforce Comm'n*, 319 S.W.3d 787, 790 (Tex. App.—El Paso 2010, no pet.); *Lopez v. Tex. Workforce Comm'n*, No. 01-10-00849-CV, 2012 WL 4465197, at *1 (Tex. App.—Houston [1st Dist.] Sept. 27, 2012, no pet.) (mem. op.). Because the trial court did not identify the basis for its ruling, we must affirm its ruling on any meritorious theory that a party presented to the trial court. *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671,

680 (Tex. 2017). Because the parties cross moved for summary judgment, we must determine whether the summary judgment evidence established that substantial evidence supported TWC's decision. *See Direct Commc'ns, Inc. v. Lunsford*, 906 S.W.2d 537, 542 (Tex. App.—Dallas 1995, no writ).

D. Substantial evidence of job abandonment

The issue before us is whether there was substantial evidence before the trial court that Green quit her job without good cause. Green concedes that she has never alleged that she had good cause to quit. Instead, she maintains that she never quit at all. Green asserts that TFA terminated her employment when TFA removed her from the work schedule and denied entry to her workplace, and Green received no communications from Friedkin.

The TWC and TFA argue that Green abandoned her job because she filed for unemployment after E. Morales, her co-worker, informed her that he did not believe TFA had fired her. They also argue that M. Rosen, TFA's attorney, emailed Green on the same day she applied for unemployment benefits and told her that TFA had not fired her. They therefore contend that Green's failure to return to work supports the TWC's finding that she was not interested in retaining her employment. Thus, she departed voluntarily or abandoned her job when she filed her claim for unemployment benefits.

The TWC and TFA submitted evidence in support of their motion for summary judgment challenging Green's contention that removal from the work schedule meant that TFA terminated her employment. TFA's Work Schedule Policy provided, in pertinent part, "If you are unsure of your schedule, please use the schedule of your most previous work day [sic]." Similarly, TFA's Terms of Employment echoed the same policy:

> "Employee will be notified of his/her work schedule by text from either [T.] Friedkin or her authorized assistant; provided, however, that if Employee does not receive a text by 9:00 p.m., then Employee shall work the same hours he/she worked the prior day.

Green signed both documents.

Rosen testified that TFA's records do not show any TFA employee denying Green entry at the front gate. R. Santos, the house manager for TFA, testified in her declaration that she was instructed to tell all employees who arrived at the gate to talk to Friedkin. She denied telling Green or any other TFA employee that "she was not permitted through the gate or should be turned away."

The TWC and TFA presented text messages between Green and Morales, another personal assistant for TFA. Green worried about not receiving her work schedule and assumed that she had been fired. Morales told Green that he received instructions to let Friedkin know when she arrived at work. After Green explained the reason for her absence, Morales reassured her that he did not believe Friedkin would have fired her for missing one day of work. Minutes after Morales had

reassured Green that TFA had not fired her, Green sent a text message to Friedkin stating that she had been fired:

> So, they aren't supposed to let me through the gate? I'm fired because I wanted to spend time with my dying father on Christmas day! U actually thought that helping u pack to go on another of your lavish trips was more important than possibly one of my last days to see the man who raised me?!!!

Friedkin did not respond to this message or any of Green's other communications. Green's next message asked, "I am to assume that I'm fired, correct?" Again, Friedkin did not respond. In her declaration, Green admitted that Friedkin never told her that she was fired. Yet Green filed for unemployment benefits.

Green submitted countervailing summary judgment evidence. Green testified in her declaration that Friedkin "stopped scheduling me, wouldn't speak to me, wouldn't allow me on the property, changed my access code, and told the employees not to let me in." She admitted that Friedkin never told her that she was fired, but she felt "the effects of her treatment were the same as if she had" been fired. She introduced her text messages to Friedkin, showing no responses from Friedkin after sending multiple text messages asking about her work schedule. Green also introduced a copy of the work schedule for the week of December 24, 2018, revealing that her name was not on the work schedule. She presented a text message from B. Cullen, a TFA employee, stating that she and other TFA employees were

instructed to deny gate entry to three people, including Green. Thus, Green contends that she had to file a claim for unemployment benefits.

Viewing the evidence in the light most favorable to TWC's decision, we conclude that substantial evidence supports TWC's decision denying Green unemployment benefits. *See Blanchard,* 353 S.W.3d at 572. "[M]ere suspicion by the employee that [s]he may be terminated sometime in the future is not sufficient to show . . . good cause connected with work for leaving." *Madisonville Consol. Indep. Sch. Dist. v. Tex. Emp. Comm'n*, 821 S.W.2d 310, 313 (Tex. App.—Corpus Christi 1991, writ denied). According to the TWC's policy, when an employee files a claim for unemployment benefits, this claim serves as an employee's notice to the employer that the employee has ended the employment relationship.[1] Under those circumstances, the employee has voluntarily quit her job without good cause connected with work. In applying its policy here, the TWC determined that Green did not have good cause for quitting her job. In its findings of fact and conclusions of law, the TWC found that "the claimant quit . . . when she filed her initial claim for benefits." It also found that the "employer's lack of communication and the

[1] *See* TEX. WORKFORCE COMM'N APP. & POL'Y MANUAL, VL 135.20 (2), Appeal No. 2133419, Discharge or Leaving, (Aug. 22, 2017) *available at* https://www.twc.texas.gov/files/jobseekers/appeals-policy-precedent-manual-voluntary-leaving-twc.pdf.

claimant's lack of work during a period when the claimant had notice the employer was on vacation does not give claimant good cause to quit."

The trial court did not err in determining that the TWC's decision was not unreasonable, arbitrary, or capricious. *Ross*, 701 S.W.2d at 831. Although conflicts exist about whether TFA denied Green entry at her workplace, we must resolve any conflicts in favor of the TWC's decision. *Farris*, 27 S.W.3d at 312. We must affirm and uphold the TWC's decision because Green has not alleged or provided any evidence showing that good cause connected to her work for voluntarily leaving her employment. *Hansen*, 525 S.W.3d at 680–81. Rosen's affidavit provides a reasonable basis to determine that Green did not allow Friedkin to return from her international vacation and respond to Green's text messages to address her work schedule situation. *See City of Hous.*, 274 S.W.3d at 267 (inquiry is whether reasonable minds could have reached the same decision as the agency decision under review). And Green knew Friedkin would be traveling internationally, beginning on December 26, 2018. The trial court could have reasonably concluded that Green abandoned her TFA job without good cause connected with her work because she missed three scheduled shifts, speculated that TFA had fired her, and filed a claim for unemployment benefits before speaking with her employer after she had returned from vacation. *See* TEX. LAB. CODE § 207.045; *cf. Madisonville Consol.*, 821 S.W.2d at 314 (determining that employee voluntarily left his work and had good cause to

do so because substantial evidence showed that employee had good reason to believe that he would imminently be discharged and that he was given a chance to "resign with dignity" rather than being fired).

Conclusion

We affirm the trial court's judgment.

Sarah Beth Landau
Justice

Panel consists of Chief Justice Radack and Justices Landau and Countiss.