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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0288**

James Duffy,
Relator,

vs.

Aitkin Auto Group, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 28, 2017
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 34871074-3

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Aitkin Auto Group, Inc., Aitkin, Minnesota (respondent)

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Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer. Because the record supports the ULJ's decision, we affirm.

FACTS

Relator James Duffy, then about 52, began to work for respondent Aitkin Auto Group, d/b/a Brandl Chevrolet & Buick, Inc. (Brandl), as a full-time, commissioned salesman in 2012. He was subordinate to the finance manager (FM), the sales manager (SM), and the on-site manager (OSM). Although relator was occasionally reprimanded in an angry or hostile manner by FM, relator did not ever report any of these incidents.

In 2015, relator walked off the job when he did not receive a bonus to which he thought he was entitled. He received a written warning telling him that walking off the job when he was upset was not acceptable.

In the summer of 2016, Brandl opened a call center to collect and channel phone and internet sales leads. Relator felt that he was not getting his fair share of the sales leads and that SM was responsible for this.

On July 25, 2016, a customer who had been approved for credit to purchase a truck arrived shortly before closing time. Relator permitted the customer to test-drive a truck without relator being in the truck, violating a practice that he said was highly recommended but not mandatory. SM overheard FM yell an obscenity at relator and ask why he wasn't on the test drive. The situation escalated to the point where relator said, "Then you sell

cars,” threw some window cleaner and towels on the floor, said to SM, “Tell [FM] to go to hell,” and left with the keys to a truck. SM texted relator about the keys; he brought them back and then went home. Because this was the second time relator had walked off the job, SM suspended him without pay until August 1, 2016.

Relator did not return to work on that date. SM texted him, asking if he was coming to work; relator asked her what time they were meeting with him and said he would like a copy of his personnel file. When relator arrived, SM and OSM met with him. Relator was told that walking off the job when he was upset was not acceptable, but also told that SM understood relator needed “time to process [the incident]” and wanted to “do the right thing to help [relator] out.” SM and OSM offered relator three alternatives to resolve the matter: either they would meet with FM, or they would meet with FM and relator, or relator could meet with FM on his own. Relator said he would meet with FM on his own. At the conclusion of the meeting, SM expected relator to return to work in the next day or two.

Relator did not return to work on August 2 or 3; he did not meet with FM; and he did not tell SM or OSM that he had decided not to meet with FM. FM called relator and went to relator’s house, but relator did not answer the phone or open the door. SM texted relator to ask what his timeframe was. Relator responded that he “[didn’t] feel comfortable nor appreciated to return,” that FM’s “verbal abuse” of relator on July 25 was “uncalled for” and relator did the “only thing [he] could do and removed [him]self from the hostile situation” and that SM “put the wrong person on unpaid leave.”

SM texted that she was treating relator’s text as a resignation and asked him to write a letter of resignation. He replied that he was “not resigning,” he believed the unpaid leave

“was unjustified,” he was seeking legal advice from the State Employee Labor Board, and he felt his rights had been violated. SM texted back that, if relator was not resigning, he needed to follow the proper procedure, i.e., appear the next day at 8:00 a.m.; she said Brandl wanted to “work through this” and “offered to help with a resolution.” Relator replied that, on the following day, he would contact a person in human resources (HR) and give his reasons for not returning to work. He also asked SM to stop FM from coming to relator’s home and calling relator.

On August 5, relator quit his employment. He texted HR that: (1) he didn’t “feel comfortable working in the hostile environment allowed by the management”; (2) FM’s verbal abuse was “rude and disrespectful” and relator had done “the only thing [he] felt [he] could do . . . [when he] went home”; (3) the decision to put relator on unpaid leave “was unjustified”; (4) relator felt in his heart that he could not return; (5) relator had lost his respect for the management; (6) relator felt his employee rights under Minnesota labor laws had been violated; and (7) relator wanted his personnel file and his monthly sales numbers to be mailed to him.¹

When Brandl learned that relator had applied for unemployment benefits, it reported to respondent Department of Employment and Economic development (DEED) that relator had quit his employment and had not made Brandl aware of any problems with work. DEED denied relator’s application for unemployment benefits, and relator challenged the denial.

¹ In this text message, the only reason relator gave for quitting was the incident with FM and Brandl’s response to it.

Following a telephone hearing, the ULJ issued a finding that relator quit his employment without a good reason caused by his employer and a decision that he was therefore ineligible for unemployment benefits. In response to relator's request for reconsideration, the ULJ issued an order of affirmation.

Relator petitioned for certiorari review of the ULJ's decision. He argues that he had a good reason caused by his employer for quitting his job.

D E C I S I O N

When an applicant for unemployment benefits quits employment, whether any of the ten exceptions to ineligibility for benefits applies is a question of law and is reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000); see Minn. Stat. § 268.095, subd. 1(1) (2016) (providing an exception where the applicant quit because of a good reason caused by the employer). Relator argues that he is eligible for benefits because he had a good reason caused by his employer for quitting.

A good reason caused by the employer is a reason “that is directly related to the employment and for which the employer is responsible,” that is adverse to the employee, and “that would compel an average, reasonable worker to quit and become unemployed rather than remain in the employment.” Minn. Stat. § 268.095, subd. 3 (2016). This reasonable-person standard is objective, not subjective; it refers to the average worker, not the hypersensitive worker. *Werner v. Med. Prof'ls, LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010), review denied (Minn. Aug. 10, 2010). Adverse working conditions are not a good reason caused by the employer unless the employee has complained of the conditions and given the employer an opportunity to correct them. Minn. Stat. § 268.095, subd. 3(c).

Relator testified that three adverse working conditions caused him to quit: (1) the hostile environment resulting from FM's temper tantrums; (2) the new call center not directing enough customer calls and leads to relator; and (3) fear of repercussions if he made negative reports about FM, who was responsible for the hostile environment, and SM, who was responsible for the call center. But relator's testimony makes it clear that he did not complain of any of these conditions or give Brandl an opportunity to correct them.

The ULJ questioned relator.

Q: [S]o before you quit did you ever go to [SM] or [the call center person] or [HR] with this concern about the distribution of the leads or no[?]

A: On August 1 [after my suspension] I mentioned it when I was meeting with [OSM] and [SM] and they made it clear to me that they had lost confidence in me because . . . my delivery process was not good[.]²

....

Q: . . . Are you talking about reporting [FM] or someone else [?]

A: Well it would be [SM] for distributing the leads, that's discriminating to me. [FM] for his temper tantrums that I can't take. . . .

Q: . . . I'm trying to figure out your third reason why you left. And you said reporting a manager, reporting [SM] or [FM]. . . . Did you in fact report them to somebody or no [?]

A: That's the problem, to who would I report 'em to cause they were the staff, they were the leaders, the managers.

....

² SM testified that, at the August 1 meeting, relator "admitted . . . that he did not do a very good job of thoroughly covering the new vehicle which is a requirement of our manufacturer to go over certain things with customers." The ULJ found that, on the issue of the sales leads, "[SM's] testimony was more credible than [relator's] testimony because it was based on firsthand knowledge (she was involved in the distribution of call center leads), was specific, was a reasonable explanation of what occurred under the circumstances, and was supported by text messages."

Q: . . . [A]re you trying to say . . . you didn't report [SM] or [FM] because you didn't know who to report to because they were your superiors, right[?]

A: Exactly, yes.

Q: And because of that you felt like you had no option but to quit, right.

A: Yes.

Q: . . . You did not report them to anyone, I mean is that fair to say that [?]

A: Yes.

Q: Okay, for example you did not report them to [HR?]

A: I did not.

Q: Okay, and you did not report them to . . . [OSM], right[?]

A: Did not.

....

Q: [D]id [SM and OSM] say anything to you or . . . was there any kind of agreement for example, ["relator], we're gonna talk to [FM?"] . . . Did anything like that happen or no[?]

A: No, I chose, I was the one who said I would talk to [FM]. But then the more I thought about it, . . . they're a . . . management team and if they would have talked to him it would have gone nowhere. I was gonna talk to him but then he kept calling me and he'd show up at my house uninvited. I decided that was it[;] I'm not gonna talk to him.

....

Q: [Y]ou agreed that you would talk to [FM] yourself, is that what happened[?]

A: Yes I said I would but the more I thought about it I'm not gonna.

Q: Okay, so you never talked to [FM] about it, right [?]

A: Nope.

Q: Okay, and then . . . the understanding between yourself, [SM] and [OSM] was that you were gonna talk to [FM], not them right [?]

A: Correct.

....

Q: . . . Did you at any point let either [SM] or [HR] know . . . that you didn't want to speak with [FM] after all[?]

A: I did not.

The ULJ concluded that relator had not given his employer an opportunity to correct the adverse working condition caused by FM because he refused the offer of SM and OSM to talk to FM, he said he wanted to talk to FM himself, he rejected FM's efforts to contact him by phone and by coming to his house, and, without telling SM, OSM, or HR, he changed his mind and decided not to talk to FM himself. Thus, relator eliminated the possibility of his employer being able to correct the adverse work condition of which he complained.

Relator does not cite any cases in which an employee who did not give the employer an opportunity to correct an adverse work condition was found to be eligible for benefits. The cases on which he relies, *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590 (Minn. App. 2006) and *Wetterhahn v. Kimm Co.*, 430 N.W.2d 4 (Minn. App. 1988), are distinguishable because they concerned employers that were given an opportunity to correct the adverse condition. In *Nichols*, an employee had endangered the applicant for benefits with a forklift; that employee was given verbal warnings, but these proved ineffective. 720 N.W.2d at 596. In *Wetterhahn*, the employer failed to apply its graduated disciplinary procedure to an employee who harassed the applicant. 430 N.W.2d at 5. Here, relator explicitly told those who volunteered to deal with FM that he did not want them to do so; he wanted to confront FM himself.

Relator did not meet the requirement of giving his employer an opportunity to correct adverse working conditions; therefore, the adverse working conditions were not a

good reason caused by his employer for quitting. *See* Minn. Stat. § 268.095, subd. 3(c).

The ULJ correctly determined that relator is ineligible for benefits.

Affirmed.