STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0706

Dorothy Manni,
Relator,

vs.

Duluth Clinic, Ltd.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed November 6, 2017
Affirmed
Jesson, Judge

Department of Employment and
Economic Development
File No. 35224261-3

Dorothy Manni, Virginia, Minnesota (pro se relator)

Duluth Clinic, Ltd., Duluth, Minnesota (respondent employer)

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

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

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

JESSON, Judge

In this unemployment-benefits appeal, relator Dorothy Manni argues that a looming potential dress code constituted a good reason to quit caused by her employer and challenges the unemployment-law judge's determination that she was ineligible for unemployment benefits. We affirm.

FACTS

Manni started working for respondent Duluth Clinic, Ltd. in 2014. The clinic had a business-casual dress code, and she often wore a business jacket. Manni interviewed for a different position at a separate Duluth Clinic location and ultimately got the position. She started to work at the new job in September 2016. During the interview process, the dress code was not discussed, and Manni continued to wear the same type of clothes once she started her new position.

At the new location, workers had recently unionized, and a potential dress code consisting of mandatory polo shirts was part of ongoing negotiations between management and the union. Manni first learned about the potential dress code at a November staff meeting, where she informed management that she did not like to wear polo shirts. She thought they were "tacky" and unprofessional. A couple of hours after the meeting, she informed a manager that she was uncomfortable wearing polo shirts and would not stay with the company if it became a requirement. The manager mistakenly replied that the dress code would become mandatory on January 1, 2017, when in fact it was only part of a tentative agreement between Duluth Clinic and the union.

On that same day, Manni sent an email to her union president and expressed concerns over the dress code. The union president replied a week later that the dress code was part of *ongoing* negotiations. Throughout the next few weeks, Manni spoke with several managers and received conflicting information on whether the dress code was going to become mandatory, or if it was just a tentative agreement. Despite the confusion, Manni stated in documentation she submitted to the ULJ prior to the hearing that she was aware "it was just a [t]entative [a]greement and it was not going to be mandatory Jan. 1, 2017." During a meeting with her supervisor, Manni said that she would not wear polo shirts and would have to be fired instead. The supervisor replied that she would not terminate her, but there would be repercussions if she did not follow the dress code.

In late December, Manni received a job offer from a different employer, and she quit her job with the provided reason of "I have been offered a position with a school closer to home." Prior to quitting, Manni never informed Duluth Clinic why she could not wear polo shirts other than thinking they were unprofessional. She never informed the clinic about a medical condition preventing her from wearing polo shirts, or if she needed an accommodation. Manni also did not ask Duluth Clinic if the proposed dress code would allow her to wear a business jacket over the polo shirt.

Manni applied for unemployment benefits but was determined ineligible. She appealed and argued that Duluth Clinic caused her to quit by saying the polo shirts would be part of a mandatory dress code and that it failed to disclose this dress code policy during the interview. She also argued that polo shirts would negatively affect her:

> In addition to be [sic] given false information, the polo shirt would cause a severe negative affect on me. These shirts are too tight fitting. I am unable to wear tight fitting clothes. For personal reasons, there are many days I need to adjust, unhook, or remove my undergarment.

At the hearing, she did not mention any medical conditions, but she did say that undergarments occasionally cut off her breathing so she needs to remove them. Manni further explained that she needs to wear undergarments with polo shirts, because the lack of undergarments is too noticeable.

The ULJ determined that Manni was ineligible for benefits because she quit and did not fall within any statutory exception. This included determining Manni did not quit due to a good reason caused by the employer under Minnesota Statutes section 268.095, subdivision 1(1) (2016), because: (1) she quit before any dress code went into effect, so there were no adverse working conditions; (2) even if the dress code did go into effect, Manni's dislike of polo shirts was a personal preference, and not the result of a medical condition; and (3) Manni never requested an accommodation.

Manni filed a request for reconsideration, arguing that she had a medical condition that prevented her from following the dress code. She presented a letter from her doctor stating, "Due to complications with her medical condition, [Manni] is unable to adhere to the dress code." The ULJ affirmed his previous determination because Manni did not explain what the medical condition was or how it prevented her from wearing polo shirts, she did not request any accommodations from Duluth Clinic, and there were no adverse working conditions at the time she quit. This appeal follows.

D E C I S I O N

Individuals who quit employment are generally ineligible to receive unemployment benefits unless they fall within a statutory exception, one of which includes applicants who quit because of a "good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). A good reason caused by the employer 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). Furthermore, employees who allege that there are adverse working conditions must complain to the employer and give the employer a reasonable opportunity to correct the adverse conditions. Minn. Stat. § 268.095, subd. 3(c). Whether an applicant had a good reason to quit caused by the employer is a question of law, which we review de novo, but factual findings by the ULJ should not be disturbed if they are substantially sustained by the evidence. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882-83 (Minn. App. 2012).

Manni argues that she quit because she could not wear polo shirts due to a medical issue, Duluth Clinic gave false information to her regarding the status and effective date of the dress code, and the dress code was not discussed during the interview. She argues that the ULJ erred in determining these were not good reasons to quit caused by her employer. We address these arguments in turn, in addition to a failure-to-accommodate argument that Manni alludes to.

The potential dress code is not a good reason to quit caused by the employer.

Manni primarily argues that the dress code in itself was a good reason to quit caused by her employer. But this argument fails because the dress code had not yet caused any adverse conditions as required under Minnesota Statutes section 268.095, subdivision 3(a), and even if it did, Manni did not give Duluth Clinic a reasonable opportunity to correct any adverse conditions pursuant to Minnesota Statutes section 268.095, subdivision 3(c).

The dress code did not create any present adverse conditions because it was not yet enacted. While there were some miscommunications about the status of the dress code, the ULJ found that Manni learned that it was only tentative and would not become mandatory on January 1, 2017. And regardless of her knowledge regarding a future effective date, the dress code was not in effect at the time she quit. Any concerns regarding the impact of the new dress code were speculative. Similarly, the record is devoid of evidence showing whether the polo shirts would actually be tight fitting or cause Manni any of the issues she was concerned about. This undermines Manni's argument because, for conditions to be adverse to the worker, the conditions must be supported by more than mere speculation. *See Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 802 (Minn. App. 2005) (holding that a change of work location was not an adverse working condition because the possibility of a reduction in wages and hours was merely speculative), *review denied* (Minn. July 19, 2005). Like in *Walch*, the adverse working conditions here are speculative, and because there were no active adverse conditions, the dress code cannot constitute a good reason to quit under Minnesota Statutes section 268.095, subdivision 3(a)(2).

Even if there were adverse working conditions, Manni failed to give Duluth Clinic a reasonable opportunity to correct them. Manni complained multiple times about the polo shirts, but these complaints centered on the shirts being tacky or unprofessional. Manni never mentioned that the polo shirts were too tight fitting for her, that there was an underlying medical condition affecting her ability to wear polo shirts, or that she needed an accommodation of any kind. The unemployment statute does not just require that the applicant complain to her employer, but to also "give the employer a reasonable opportunity to correct the adverse working conditions." Minn. Stat. § 268.095, subd. 3(c). Because Manni never explained to Duluth Clinic why she cannot wear polo shirts, and instead only expressed that it was a personal preference that she did not like polo shirts, she did not give her employer a "reasonable opportunity to correct the adverse working condition[]" pursuant to Minnesota Statutes section 268.095, subdivision 3(c).

Because of both the lack of adverse effects stemming from a potential dress code and the lack of communication from Manni regarding her concerns, the dress code in itself was not a good reason to quit caused by the employer.

Information provided to Manni regarding the status and effective date of the dress code is not a good reason to quit caused by the employer.

Broadly interpreted, Manni also argues the miscommunications about the status of the dress code and the fact the dress code topic did not occur during the interview constitute good reasons to quit caused by Duluth Clinic. We disagree. Two facts drive Manni's argument: (1) Duluth Clinic mistakenly told her that the dress code would become mandatory and (2) the dress code was never discussed during the interview. However,

neither of these issues constitutes a good reason to quit, as a miscommunication and failure to address dress codes during an interview are unlikely to cause a reasonable person to quit. This is especially true given that Duluth Clinic corrected its miscommunication with Manni and she was aware the dress code was part of ongoing negotiations.

A failure-to-accommodate violation did not occur, and therefore cannot serve as a good reason to quit caused by the employer.

Manni argues that she had a medical condition preventing her from complying with the potential dress code and that her managers should have taken the initiative to find out if any possible accommodations were necessary. While Manni does not explicitly equate her argument to possible Americans with Disabilities Act (ADA) or Minnesota Human Rights Act (MHRA) failure-to-accommodate violations, this court has discretion to review any matter in the interest of justice. *See* Minn. R. Civ. App. P. 103.04.[1]

Both the ADA and MHRA require employers to provide reasonable accommodations to qualified individuals with a disability. 42 U.S.C. § 12112(b)(5)(A) (2012); Minn. Stat. § 363A.08, subd. 6(a) (2016). A disabled individual is someone who has an impairment affecting a major life activity, has a record of such an impairment, or is regarded as having such an impairment. 42 U.S.C. § 12102(1) (2012); Minn. Stat. § 363A.03, subd. 12 (2016). But the employee has the initial burden of putting the employer on notice of a need to accommodate. *See Rask v. Fresenius Med. Care N. Am.*,

[1] Because the record does not establish that a violation occurred, this court does not need to reach the issue of whether an ADA or MHRA violation can constitute a good reason to quit caused by the employer.

509 F.3d 466, 470 (8th Cir. 2007); *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 547 (Minn. 2001).

Here, Manni is unable to establish an ADA or MHRA failure-to-accommodate violation. Importantly, the record is not sufficiently developed to determine if Manni is a qualified individual with a disability. The only known information of her medical condition is the letter from her doctor, dated after she quit, which states, "Due to complications with her medical condition, [Manni] is unable to adhere to the dress code of [Duluth Clinic]."[2] This does not explain what the condition is or any effects it has on major life activities.

More fundamentally, Manni did not satisfy her initial burden of putting the employer on notice of a need to accommodate, which is central to a viable ADA or MHRA claim. *See Rask*, 509 F.3d at 470; *Hoover*, 632 N.W.2d at 547. The ULJ made a finding that Manni never requested an accommodation. This is supported by the record. Additionally, there is no evidence that Duluth Clinic knew or should have known that Manni had a disability, and the medical letter from her doctor was dated after she quit. Because of these shortcomings, an alleged failure to accommodate does not rise to an ADA or MHRA violation and cannot serve as a good reason to quit caused by the employer.

[2] On appeal, Manni attached a new letter from her doctor, providing more detail about her medical condition. However this letter was not part of the record and cannot be considered on appeal. *See Deike v. Smelting*, 413 N.W.2d 590, 592 (Minn. App. 1987) (holding that a document not in the record cannot be considered on appeal).

Accordingly we conclude that the potential dress code, Duluth Clinic's miscommunications, and Duluth Clinic's alleged failure to accommodate were not good reasons to quit caused by the employer. Manni is not entitled to unemployment benefits.

Affirmed.