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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0492**

Bobbi Vander Veer,
Relator,

vs.

Autio Homes, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 19, 2019
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 35930507-3

Thomas H. Boyd, Tucker A. Chambers, Winthrop & Weinstine, P.A., Minneapolis,
Minnesota (for relator)

Autio Homes, Inc., Cloquet, Minnesota (respondent)

Lee B. Nelson, Anne B. Froelich, St. Paul, Minnesota (for respondent department)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that she is not eligible for unemployment benefits. Because relator quit her employment and does not meet any statutory exception to ineligibility under Minn. Stat. § 268.095, subd. 1 (2018), we affirm.

FACTS

Autio Homes, Inc. (Autio) employed relator as a behavioral aid from June through September 2017. Autio is a residential home for mentally-ill adults and many of the residents have significant behavioral problems. Some of the residents made fun of or swore at relator. One of the residents spread feces around his room when upset. Relator found the workplace “very stressful” and “really hard to deal with.”

On September 12, 2017, Autio held a staff meeting during which relator expressed frustration with how the residents’ behaviors were handled by management of Autio. Vanessa Autio, the owner, became concerned when relator indicated that she thought one of the residents should be taken outside and “hosed down.” Ms. Autio suggested to relator that she receive more training on how to properly work with some of the difficult behaviors of the clients, and indicated that this training would be necessary in order for relator to continue to work there. Relator declined to receive more training, stating that the environment was “too toxic.” That was the last day relator worked at Autio.

In late September 2017, relator contacted Ms. Autio and asked about the training, indicating that she was willing to come back to work. Ms. Autio responded by saying that

she would begin looking into the training for relator so she could come back to work. On October 11, 2017, relator emailed Ms. Autio and said that she no longer wished to work at Autio.

Relator applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that relator was eligible for unemployment benefits. Autio appealed. A ULJ held an evidentiary hearing on November 13, 2017, at which relator and Vanessa Autio both testified.

On November 30, 2017, the ULJ decided that relator was ineligible for employment benefits. The ULJ held that relator quit her job at Autio on September 12, “because the group home residents were difficult and she did not want to undergo additional training.” The ULJ found relator’s testimony not credible and explained, “Autio credibly testified that when the offered [relator] mandatory training on September 12, 2017, it would have set up immediately without her missing any work or pay.” The ULJ further found that relator did not have a good reason caused by the employer to quit her employment. The ULJ acknowledged the difficult working conditions, but held that they “were not enough for [relator] to fear for her safety” or “enough to compel an average, reasonable employee to quit.” Relator requested reconsideration, and on March 12, 2018, the ULJ affirmed the decision.

Relator appeals by writ of certiorari.

D E C I S I O N

In reviewing a ULJ’s eligibility decision, this court may affirm or remand for further proceedings, or reverse or modify if the petitioner’s substantial rights might have been

prejudiced because the findings, inferences, conclusion, or decision was: “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (2018).

A person who quits employment is ineligible for unemployment benefits unless she meets a statutory exception to that ineligibility. Minn. Stat. § 268.095, subd. 1. Whether a person quit or was discharged from employment is a question of fact. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). We view a ULJ's factual findings in the light most favorable to the decision, deferring to the ULJ's credibility determinations. *Wiley v. Robert Half Int'l, Inc.*, 834 N.W.2d 567, 569 (Minn. App. 2013). But whether a statutory exception to ineligibility applies is a question of law that we review *de novo*. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

I. Substantial evidence supports the ULJ's decision that relator quit her employment.

Relator first argues that the ULJ erred in finding that she quit her employment with Autio. We disagree.

“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.” Minn. Stat. § 268.095, subd. 2(a) (2018). In contrast, a discharge 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) (2018). “An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, has quit the employment.” *Id.*, subd. 2(c) (2018); see *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 333 (Minn. App. 2009) (“[A]n employee can receive a notice of discharge and then proceed to end his employment before the discharge is effective. When this happens, the employee is considered to have quit his employment.”).

The ULJ found, and substantial evidence supports, that relator quit. Both Vanessa Autio and relator confirmed that Autio offered relator training, but she declined. Ms. Autio testified that, had relator agreed to the training on September 12, it could have been set up right away, and she need not have missed work. Relator declined the training and said that she did not want to work there anymore. Relator argues that she did not quit, though was indefinitely suspended, because Ms. Autio told relator that she could not continue her employment until she completed the training. However, this argument is contradicted by relator’s own testimony. When the ULJ pressed relator on whether she said she quit on September 12, relator responded, “I don’t think I said I didn’t want to be employed there. I, I might have, I don’t know.” Relator made the decision to reject the offered training, indicating in the process that she did not want to work at Autio anymore because it was “too toxic.”

Deferring to the ULJ’s determination that Ms. Autio’s testimony is the more credible, substantial evidence supports the finding that relator quit her employment after refusing to receive further training.

II. The statutory good-cause exception to ineligibility does not apply.

Relator argues that she had a good reason to quit her employment because she was consistently harassed by the residents at Autio, which her employer did nothing to mitigate. We are not persuaded.

A person may be eligible for unemployment benefits if she 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 that is directly related to the employment, is adverse to the employee, and would compel an average, reasonable worker to quit and become unemployed rather than remaining in employment. *Id.*, subd. 3(a) (2018). Simple frustration or dissatisfaction with working conditions is not a good reason for quitting caused by the employer. *Trego v. Hennepin Cty. Family Day Care Ass’n*, 409 N.W.2d 23, 26 (Minn. App. 1987). “The standard is reasonableness as applied to the average man or woman, and not to the supersensitive.” *Hein v. Precision Assocs., Inc.*, 609 N.W.2d 916, 918 (Minn. App. 2000) (quotation omitted). Whether an employee had good reason to quit is a question of law, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Relator argues that her employer had notice of harassing behavior and failed to take measures to prevent it. Relator cites a number of cases that support the proposition that if an employee is consistently subject to harassment, and the employer does nothing to prevent it, that circumstance may qualify for good cause to quit within the meaning of the statute. However, all these cases concern instances of harassment by co-workers or managers. *See Nichols*, 720 N.W.2d at 595-97 (holding co-worker’s offensive name-

calling, rude behavior and threatening gestures directed toward claimant, of which employer was aware, provided good cause); *Wetterhahn v. Kimm Co.*, 430 N.W.2d 4, 6-7 (Minn. App. 1988) (holding co-worker's frequent "temper tantrums," including yelling and profanity directed at claimant provided good cause); *Tru-Stone Corp. v. Gutzkow*, 400 N.W.2d 836, 838-39 (Minn. App. 1987) (holding co-workers' name-calling, profanity, derogatory remarks, and offensive drawings directed toward claimant provided good cause).

Here, the harassment and abuse complained of came from clients living at the home, who are mentally-ill adults. It is true that "[g]ood cause attributable to the employer does not require that the employer's actions be negligent or wrongful." *Wetterhahn*, 430 N.W.2d at 6 (quotation omitted). And we have held that "[h]arassment by a co-worker may constitute good cause to quit where the employer had notice of the harassment, but failed to take timely and appropriate measures to prevent it." *Id.* However, relator has cited no authority that supports the argument that the same principle concerning harassment and verbal abuse applies in situations like this one. Some jobs are by their nature, difficult, and likely to be accompanied by verbal abuse. In such a situation, professionals working in these fields are trained on how to best deal with the harassment in such a way that minimizes the effect, which is what Autio was attempting to accomplish with relator here. It is undisputed that relator was subject to verbal abuse from the residents at Autio. The ULJ found that relator did suffer from "bad behavior from the residents, including being sworn at and the smearing of feces." However, as the ULJ found, "a certain amount of difficult behavior from residents is part of working at a group home."

As a behavioral aid with 12 years of experience, relator would have known what working in a residence for mentally-ill people is like. Given this, relator's complaints with Autio can more properly be described as dissatisfaction with working conditions, which we have held does not qualify as good cause attributable to the employer. *See Trego*, 409 N.W.2d at 26. Having a good reason to quit employment must be a reason that would compel an average, reasonable worker, to quit. The average behavioral aid is likely aware of the difficult behaviors that accompany working in a home for mentally-ill adults and would not be compelled to quit due to those difficult behaviors.

In sum, relator has not demonstrated that the behaviors of the residents at Autio would compel an average, reasonable worker to quit. Relator therefore does not qualify for a statutory exception to ineligibility.

Affirmed.