

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0492**

Byram J. Nash,
Relator,

vs.

Mayo Clinic,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 22, 2021
Affirmed
Kirk, Judge***

Department of Employment and Economic Development
File No. 42524161-3

Byram J. Nash, Rochester, Minnesota (pro se relator)

Mayo Clinic, Rochester, Minnesota (respondent employer); and

Keri A. Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Frisch, Presiding Judge; Bryan, Judge; and Kirk, Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

Relator Byram J. Nash challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job and does not meet a statutory exception to ineligibility. We conclude that the ULJ did not err by finding that Nash did not meet all the criteria required under the medical-necessity or good-reason-caused-by-employer statutory exceptions to ineligibility. Therefore, we affirm.

FACTS

Nash was a full-time employee at respondent Mayo Clinic (Mayo) from February 27, 2017, to July 12, 2020. He worked as a physical therapist supervised by the physical-medicine-and-rehabilitation department; however, his job duties included creating and growing a physical-therapy practice in the emergency department.

Nash was scheduled to work from 7:30 a.m. to 4:00 p.m. As Nash worked to grow the emergency department's physical-therapy practice, he often worked weekends and on paid time off and "comp" days, at one point working 30 days in a row. Over the course of his employment, he took the practice from annually seeing 100 patients to over 1,000.

As the emergency-department practice grew, Nash began to feel overwhelmed and "pulled in a lot of different directions." Nash had depression, anxiety, a sleep disorder, and symptoms of post-traumatic stress disorder. Nash discussed these conditions as well as his growing feelings of being overwhelmed with his supervisors throughout his employment. Generally, Nash's supervisors told him to better control his workload by refusing to take new referrals. But Nash alleges that when he tried to do so, he would get "reprimanded"

by his supervisors for not seeing referred patients. Nash's supervisors, at his suggestion, twice submitted requests to hire additional physical therapists for the emergency-department practice. The requests were denied. In January 2020, the department held a meeting to discuss other ideas to support Nash.

In a complaint to Mayo's Compliance and Integrity Program, filed in January 2020, Nash alleged bullying and retaliation. In addition to the above-mentioned reprimands, Nash cited other examples of bullying including meetings with supervisors where he was told he was "not a team player," "to work more with less," and that he was dispensable and his practice could be eliminated. He also cited that at times he was told to work through lunch, while at other times he was told he had to take a 60-minute lunch break.

Related to his bullying complaint, Nash also alleged gender discrimination. He cited a time when A.L., a human resources (HR) advisor at Mayo, told him that he was being perceived as aggressive because he was a "man that works out and has a beard." A.L. denied making that statement. She attested that the only time she discussed Nash's beard was when, during their first conversation shortly after she started working at Mayo, she told him that she did not expect him to have a beard, considering he did not have one in his picture on the online employee directory. Nash initially brought this complaint to A.L.'s supervisor, who allegedly told him that "gender discrimination only protects females."

In response to Nash's bullying complaint, a different HR advisor at Mayo conducted an investigation. On February 25, 2020, she met with Nash to present her findings. She told him she did not find any evidence of bullying or retaliation, and she suggested that he

and his team take a stress-management class together. Two days later, Nash took an indefinite medical leave of absence, citing increased symptoms of his medical conditions.

While out on leave, Nash contacted physicians in the emergency department to ask if he could switch his supervisor to someone on their team, rather than continue working in the physical-medicine-and-rehabilitation department. One physician informed Nash that she had been instructed by the head of the emergency department not to talk to him. In response, Nash filed a second complaint with the Compliance and Integrity Program, alleging retaliation. In particular, he believed the physicians he worked with were instructed not to talk to him as a form of retaliation against him because he had found a way to move his practice under the emergency department and leadership disapproved of his inquiry or did not want him to move. The investigation related to that complaint found it unsubstantiated.

Meanwhile, Nash's medical conditions did not worsen, and even improved, while on leave. On June 12, 2020, Mayo received a work-status report from Nash's medical provider stating that Nash was able to return to work without restriction on July 13, 2020. Nash testified the work-status report released him only to work somewhere else, besides the physical-medicine-and-rehabilitation department. The work-status report does not reflect that nuance. On June 14, 2020, Nash gave notice that he was resigning, effective July 12, 2020. Nash testified that he quit for medical reasons and because he believed he worked in a "toxic" work environment that subjected him to bullying, retaliation, and gender discrimination.

Subsequently, Nash applied for unemployment benefits, establishing a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility, finding Nash quit his employment for medical reasons but did not accept a reasonable accommodation made available by the employer.

Nash appealed the determination, and a ULJ conducted a hearing. Nash testified on his own behalf. Mayo was represented by A.L., who testified. Three other Mayo employees attended, one of whom testified. Two exhibits, one offered by Mayo, the other by Nash, were not accepted into the record because the non-offering party had not received a copy at the time of the hearing, and the ULJ did not “feel the need to keep the record open.”

Following the hearing, the ULJ issued a determination that Nash was not subject to any of the statutory ineligibility exceptions, so he was ineligible for unemployment benefits. Nash requested reconsideration, and the ULJ affirmed his determination. Nash submitted a timely petition for a writ of certiorari under Minn. Stat. § 268.105, subd. 7(a) (2020) and Minn. R. Civ. App. P. 115.

DECISION

“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s” decision. Minn. Stat. § 268.095, subd. 2(a) (2020). “An applicant who quits employment is ineligible for all unemployment benefits” unless he or she qualifies under one of the enumerated exceptions to ineligibility. *Id.*, subd. 1 (2020). Nash argues he qualifies for benefits under the medical-necessity

exception, Minn. Stat. § 268.095, subd. 1(7)(i), and the good-reason-caused-by-employer exception, *id.*, subd. 1(1).

Whether the applicant falls under an exception to ineligibility for quitting employment 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). We review the ULJ’s factual findings “in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotation omitted).

A. Medical Necessity

Nash first argues that he should qualify for unemployment benefits under the medical-necessity exception to ineligibility. The statute states that an exception to ineligibility based on quitting exists if the applicant 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). “This exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*

The ULJ found that it was not medically necessary for Nash to quit; however, DEED concedes that this finding was not supported by the evidence. The ULJ reasoned that it was not medically necessary for Nash to quit because when he gave his notice, his health condition had not worsened, and he had been cleared to resume work with no restrictions on July 13, 2020. Nash testified that when his medical provider cleared him to return to work, it was only for employment under a different management team and not his “current

work environment.” DEED cited this testimony, and other record and non-record evidence, when it conceded that the ULJ’s finding was not supported by the evidence.

However, DEED argues that despite the ULJ’s error, Nash nonetheless does not qualify for benefits under the medical-necessity exception because Mayo did not revoke any prior accommodation, nor did Nash request any accommodation that Mayo did not provide.

First, DEED argues that because Nash was on a medical leave of absence, he was granted a form of medical accommodation by Mayo. DEED notes that prior to Nash quitting, Mayo never requested that Nash return to work—on July 13 or any other date. In other words, Nash was not granted an accommodation that was later revoked by his employer. DEED argues this fact is significant considering *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813 (Minn. App. 2018).

In *Gonzalez Diaz*, the exception at issue was not medical necessity, it was quit due to loss of childcare, but like the medical-necessity exception, the loss-of-childcare exception has a reasonable-accommodation requirement that the court recognized as equivalent to the requirement under the medical-necessity exception. *Id.* at 817-18. The employer revoked previous accommodations to help the employee deal with her daycare problem: flexible scheduling or use of paid time off. *Id.* at 814. One day, the employee was told she would have to work regular hours and all scheduled shifts. *Id.* When, a few days later, the employee told the employer she would have to use her paid time off to accommodate her lack of childcare, the employer told her she would have to work her scheduled shift, or her employment would be terminated. *Id.* at 815. The court found that

such an “uncompromising response” to a request for accommodation, particularly an accommodation that had been previously available, was sufficient to meet the exception to quit. *Id.* at 817.

Unlike the employer in *Gonzalez Diaz*, Mayo did not indicate to Nash that no further accommodation was available to him. Nash did not request additional leave before he quit and did not receive an “uncompromising response.” *See id.*

Second, DEED argues that Nash never requested any reasonable medical accommodation from Mayo that it did not provide. Nash argues that such a request would have been “futile,” considering his medical provider only released him to find work in an “alternate work environment” and his prior efforts to switch his management to the emergency department were unsuccessful.

We find this argument unpersuasive. Prior to a January 2021 letter from Nash’s medical provider clarifying the issue, Mayo was unaware that the work-status report releasing Nash to work starting July 13, 2020, was contingent on Nash finding work in an “alternate work environment.” Therefore, prior to Nash quitting, Mayo did not receive notice that different management in a different department was necessary to accommodate his medical conditions. That notice may have changed Nash’s situation, because once the employee provides documentation of a medical necessity, the onus is on the employer to provide reasonable accommodation in response or risk the employee quitting, qualifying under the statutory exception to quit, and leaving the employer subject to the consequences of the employee’s unemployment benefits. *See* Minn. Stat. § 268.095, subd. 1(7)(i).

Moreover, even if Nash's efforts to change departments had previously proven futile, there is no evidence in the record that he requested to change departments after a medical provider deemed the change medically necessary. From his previous attempts, he knew that Mayo's HR department was unhappy with how he informally inquired into changing departments, but the record does not demonstrate that he tried a different strategy with the support of medical documentation. This fact is notable considering Nash testified that he knew of other physical therapists at Mayo who successfully had joined other departments, so he knew it was in the realm of possibility.

Regardless of whether requesting an accommodation would ultimately have been futile, the governing statute requires evidence that Nash *tried* requesting an accommodation from Mayo before he quit in order to qualify for benefits under the exception. *See id.* Though Nash had a medical condition that prevented him from working without accommodation—in particular, “an alternate work environment”—the record does not indicate that he sought any accommodation from his employer prior to quitting, so we cannot determine if he was denied a reasonable accommodation. Consequently, Nash did not fulfill all criteria under Minn. Stat. § 268.095, subd. 1(7)(i), and the ULJ did not err when he determined that Nash did not qualify for unemployment benefits under the medical-necessity exception to ineligibility.

B. Good Reason Caused by Employer

Nash also argues that he should qualify for unemployment benefits under the good-reason-caused-by-employer exception to ineligibility. The statute states that a good reason for quitting 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.” *Id.*, subd. 3(a) (2020). The third factor is at issue in this case.

“To compel is ‘to cause or bring about by force, threats, or overwhelming pressure.’” *Werner v. Medical Pros. LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quoting *Black’s Law Dictionary* 321 (9th ed. 2009)), *rev. denied* (Minn. Aug. 10, 2010). The standard is an objective, reasonable-person standard. *Id.* It applies “to the average man or woman, and not to the supersensitive.” *Nichols v. Reliant Eng’g & Mfg.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted). “While an employee may have a good personal reason for quitting, it does not necessarily constitute a good reason caused by the employer for quitting.” *Werner*, 782 N.W.2d at 842.

While out on leave, Nash noticed his symptoms getting better after several months away from his work environment. Together with his medical team, he decided it would be best for his health to quit and pursue opportunities elsewhere. Nash’s decision to quit was not “compelled” by any force, threat, or pressure caused by Mayo. His decision to quit was due to his health. This may have been a good personal reason to quit but, in this case, it was not a “good reason caused by the employer.” *See id.* Consequently, Nash did not

fulfill all criteria under Minn. Stat. § 268.095, subd. 3(a), and the ULJ did not err by determining that Nash did not qualify for unemployment benefits under the good-reason-caused-by-employer exception to ineligibility.

Affirmed.