

**ANNAMARIA EULO, Appellant, v. FLORIDA UNEMPLOYMENT APPEAL  
COMMISSION AND ENTEL WOLSTEIN WEISS PARTNERSHIP, FLORIDA  
COMMUNITY CANCER & IMA, Appellees.**

**CASE NO. 98-00928**

**COURT OF APPEAL OF FLORIDA, SECOND DISTRICT**

*724 So. 2d 636; 1999 Fla. App. LEXIS 11; 24 Fla. L. Weekly D 162*

**January 6, 1999, Opinion Filed**

**SUBSEQUENT HISTORY:** [\*\*1] Released for  
Publication January 26, 1999.

**PRIOR HISTORY:** Appeal from the Florida  
Unemployment Appeals Commission.

**DISPOSITION:** Reversed.

**LexisNexis(R) Headnotes**

**COUNSEL:** Marcus A. Castillo of Haas & Castillo,  
P.A., Clearwater, for Appellant.

John D. Maher, Tallahassee, for Appellee Florida  
Unemployment Appeals Commission.

**JUDGES:** THREADGILL, A.C.J., and CASANUEVA,  
J., and QUINCE, PEGGY A., Associate Judge, Concur.

**OPINION:** [\*637] PER CURIAM.

The appellant, Annamaria Eulo, contends the  
Unemployment Appeals Commission (UAC) erred in  
reversing an appeals referee's decision to award her  
unemployment compensation benefits. We agree and  
reverse.

The appeals referee found that Eulo began working for  
the employer herein as a medical transcriptionist in 1992.  
She worked for three years without incident until, in  
1995, she was assigned to a new supervisor, who  
continually harassed and verbally abused her. In  
September 1997, she resigned her employment because  
she could not tolerate the abuse any longer. Since Eulo

resigned only because of the continuing harassment and  
verbal abuse--a situation she attempted to rectify--the  
referee concluded that Eulo voluntarily left her  
employment for good cause attributable [\*\*2] to her  
employer and was thus entitled to benefits under section  
443.101(1)(a)1., Florida Statutes (1997). The UAC  
reversed the referee's decision concluding that, though  
Eulo had complained of the supervisor's behavior, she  
elected not to pursue her complaint, and she failed to  
either establish that the employer violated the terms of  
her employment, or that her physical condition required  
her to leave her job. While the UAC must accept a  
referee's factual findings if they are supported by  
substantial, competent record evidence, it may reject the  
referee's legal conclusions based on that evidence. See  
*Ritenour v. Unemployment Appeals Comm'n*, 570 So. 2d  
1106 (Fla. 5th DCA 1990). The UAC may not, however,  
modify the facts to reach a different legal conclusion.  
See *Berry v. Scotty's, Inc.*, 711 So. 2d 575, 577 (Fla. 2d  
DCA 1998). Nor may the UAC rely on facts that were  
not established at the hearing. See *Georgia v. Florida  
Unemployment Appeals Comm'n*, 647 So. 2d 279, 282  
(Fla. 2d DCA 1994). It further cannot rely on a theory  
not advanced by one party or anticipated by the other.  
See *Berry*, 711 So. 2d at 577. A legal conclusion of the  
UAC may therefore be overturned if it [\*\*3] is clearly  
erroneous. See *Brooks v. Unemployment Appeals  
Comm'n*, 695 So. 2d 879 (Fla. 5th DCA 1997). In the  
instant case, the UAC relied on inferences it [\*638]  
improperly drew from facts taken out of context. It also  
improperly relied on facts that were not established at the  
hearing before the appeals referee. The UAC's order also  
improperly based disqualification on Eulo's failure to

establish facts that were unnecessary to support a finding of eligibility in this instance.

The record establishes that Eulo was subjected to constant harassment and verbal abuse from her supervisor for nearly two years, and that such conduct, which had become unbearable, was the sole reason for her resignation. The record also establishes that the employer was well aware of the problem, but took no action to resolve it. In 1996, Eulo submitted a very lengthy, detailed letter to the employer's human resources department, describing many instances of her supervisor's abusiveness. In response, Eulo was instructed to hold off on her grievance, it being suggested that, perhaps, the supervisor was having a bad day. Eulo complied, but thereafter, in response to periodic inquiries from the human resources department, [\*\*4] informed the employer that the supervisor's misconduct was continuing. Despite that fact, there was no change in the situation. There is no evidence that Eulo ever indicated she was abandoning her complaint, or that she ever specifically elected not to pursue it. At the hearing, the employer did not in any way dispute the supervisor's longstanding and continuing abusiveness or its awareness of the problem. Nor did the employer make any attempt to argue or otherwise assert the existence of any mitigating factors or other reasons for Eulo's departure—or any failures, improprieties, or wrongdoing by Eulo. Instead, it chose to participate at the hearing only to the limited extent of verifying the dates of Eulo's employment and resignation.

Good cause for leaving employment turns on whether the circumstances in a given case "would have impelled the average, able-minded, qualified worker to give up his employment." *Lewis v. Lakeland Health Care Center, Inc.*, 685 So. 2d 876, 879 (Fla. 2d DCA 1996); see also *Platt v. Unemployment Appeals Comm'n*, 618 So. 2d 340, 341 (Fla. 2d DCA 1993). An employee is not required to accept undue verbal abuse from an employer. See *Gollet Enterprises [\*\*5] East, Inc. v. Florida Unemployment Appeals Comm'n*, 630 So. 2d 1166 (Fla. 4th DCA 1993); see also *Grossman v. Jewish Community Center*, 704 So. 2d 714 (Fla. 4th DCA 1998)(verbally abusive supervisors created intolerable work environment). Enduring verbal abuse thus constitutes good cause for leaving employment. See *Dempsey v. Old Dominion Freight Lines*, 645 So. 2d 538 (Fla. 3d DCA 1994). Since Eulo was subjected to the verbal abusiveness of her supervisor for an extended period of time and the employer failed to correct the problem, the appeals referee properly determined that Eulo voluntarily left her employment for good cause attributable to her employer. The UAC order, reversing the referee's decision to award her benefits, is therefore clearly erroneous.

Reversed.

THREADGILL, A.C.J., and CASANUEVA, J., and  
QUINCE, PEGGY A., Associate Judge, Concur.