STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1352

Jeffrey Wayne Illg,
Relator,

vs.

Jennie-O Turkey Store, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed March 5, 2012
Affirmed
Stoneburner, Judge

Department of Employment and Economic Development
File No. 27355907-3

Jeffrey Wayne Illg, Detroit Lakes, Minnesota (pro se relator)

Jennie-O Turkey Store, Inc., Willmar, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Klaphake, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment without good reasons caused by the employer. We affirm.

FACTS

Relator Jeffrey Wayne Illg worked for respondent Jennie-O Turkey Store, Inc. as a maintenance person from August 2000 to February 2011 without missing a shift or being late. But on February 22, 2011, Illg, without any notice to his employer, failed to report to work for his 4:00 p.m. shift.

In the weeks before February 22, 2011, Illg told a coworker that his gas stove was leaking, and Illg was concerned that he could be asphyxiated. When Illg failed to report to work on February 22, his manager, Deb Leitheiser telephoned him several times and became concerned because there was no answer. Leitheiser sent Illg's coworker, who lived near Illg, to Illg's home to check on Illg. The coworker saw both of Illg's cars in his driveway, but received no response to knocking on Illg's door. The coworker reported this to Leitheiser, who called the police. Illg did not respond to police knocking on his door. Police, concerned for Illg's safety, broke down the door. They found Illg unharmed, sleeping.

Leitheiser, after learning that Illg was safe, called him several times, but Illg did not answer his telephone or return her calls. Leitheiser called Illg again when he failed to

come to work on February 23 and February 24, but Illg would not answer her calls and had no contact with his employer after failing to come to work on February 22.

Jennie-O's employee-attendance policy dictates that three consecutive days of no call/no show by an employee is considered a voluntary termination of employment. Illg had signed an acknowledgement of this policy. Jennie-O never notified Illg that his employment was terminated but considered that he voluntarily quit by failing to report to work for three consecutive days.

In March 2011, Illg applied for unemployment benefits. Initially, a clerk at respondent Minnesota Department of Employment and Economic Development (DEED) determined that Illg's employment was terminated for misconduct, making him ineligible for benefits. Illg appealed, asserting that Jennie-O violated his rights and was "mean" to him at work. After a hearing, the ULJ held that Illg quit his employment, did not meet any exceptions to ineligibility for quitting, and was, therefore, ineligible for benefits. The ULJ affirmed this decision on reconsideration. This certiorari appeal followed.

D E C I S I O N

The Minnesota Court of Appeals may affirm the decision of the ULJ, remand the case for further proceedings, or it may reverse or modify the ULJ's decision if "the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the entire record as submitted[.]" Minn. Stat. § 268.105 subd. 7(d) (2010). We view the ULJ's factual findings in the light most favorable to the decision and give deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d

340, 344 (Minn. App. 2006). This court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id*. This court will, however, "exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010); *see also Carlson v. Dep't of Emp't & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008) (stating that "[w]hether the decision was proper is a question of law reviewed de novo.").

Whether an employee quit or was discharged is a factual question for the decision-maker. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sep. 24, 2003). "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) (2010). "The test for determining whether an employee has voluntarily quit is whether the employee directly or indirectly exercises a free-will choice to leave the employment." *Shanahan v. District Memorial Hosp.*, 495 N.W.2d 894, 896 (Minn. App. 1993).

On appeal, Illg asserts that the ULJ was "one-sided" and "didn't think that having the cops come over and break in my two front doors had anything to do with unemployment." Illg does not directly address the finding that he quit his employment. He claims that Jennie-O had no reason to call the police, and that his doors should never have been broken down, implying that if his failure to return to work constituted a quit, he was compelled to do so by Jennie-O's conduct.

Quitting employment for a good reason caused by the employer is an exception to ineligibility for voluntarily quitting employment. Minn. Stat. § 268.095, subd. 1(1) (2010). 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) (1)–(3) (2010).

The ULJ found that Leitheiser acted only out of concern for Illg's personal safety. Based on this finding, DEED argues that Leitheiser's motivations did not directly concern Illg's employment, making the exception inapplicable in this case. We agree. And the ULJ found that "[i]t is not Jennie-O's fault that Illg's door was broken down." The record supports this finding. Additionally, the ULJ found that Jennie-O did nothing to compel Illg to quit his job. In fact, Jennie-O attempted to contact Illg for days after this incident, indicating that it was not interested in terminating his employment. Illg chose to ignore the phone calls from Leitheiser, he chose not to return to work for three consecutive days, and he chose not to contact Jennie-O.

Jennie-O's decision to call the police, in the circumstances of this case, related directly to Illg's safety and only indirectly to his employment. The decision to check on his welfare was not adverse to Illg, and did not compel him to leave his employment. Given Jennie-O's policy that three consecutive days of absence without notifying the employer constitutes a voluntary termination of employment and Illg's failure to come to

work or communicate with Jennie-O, the ULJ did not err in finding Illg ineligible for unemployment benefits.

Affirmed.