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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2096**

Charles Stech,
Relator,

vs.

County of Carver, Carver County Courthouse,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 10, 2012
Affirmed; motion denied
Hooten, Judge**

Department of Employment and Economic Development
File No. 28081268-3

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(for relator)

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Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that he had a good reason to quit in declining a new position offered to him by the employer after his former position was eliminated. Because the reasons offered by relator, considered in totality, do not constitute good reason to quit his employment, we affirm.

FACTS

Relator Charles Stech worked full-time as a record-support analyst for Carver County. His duties included setting up databases, helping with the transition to a new database system, and cataloging records in boxes according to Carver County's management system. In early December of 2010, the Carver County Board made a budgetary decision to eliminate Stech's position. On December 14, 2010, Stech was told that his analyst position was being eliminated, but that he could be moved into a position as a record-management technician. The new position involved scanning, indexing records, reviewing, file score scanning, and purging or destroying documents. Approximately three weeks prior to being advised of his position's elimination, Stech had performed some of the duties of the record-management technician while training other employees.

The technician position was a demotion from the analyst position and would have paid \$20.08 per hour, which was \$2.23, or ten percent, lower than his previous \$22.31 per hour rate. The new position involved a mandatory six-month probation period.

However, in the new position, Stech would have remained in the same bargaining unit and all of his medical, dental, life, long and short-term disability, and vacation accruals would remain unchanged. The number of hours of work remained the same in the new position and there would have been no gap of employment between the termination of his analyst job and his commencement of the technician position. Finally, Stech would have continued to accrue vacation hours at the same rate, which was based on his years of service.

On December 15, 2011, Stech declined the technician position. He was placed on administrative leave until the analyst position was terminated on December 27, 2010. Stech then brought a claim for unemployment benefits. Respondent Department of Employment and Economic Development (DEED) initially determined that Stech was eligible for unemployment benefits, but Carver County appealed and argued that Stech declined the records-management technician position. DEED agreed and issued a determination of ineligibility. Stech appealed, and a telephonic hearing was held before a ULJ. Stech testified, as did an employee-relations generalist and a former supervisor from Carver County.

At the hearing, Stech's supervisor testified that Stech stated that he was declining the record-management technician position because "he would rather be put on lay-off status, collect unemployment and then he would not have to pay for daycare." Stech asserted that the pay cut would have been "a big hit" for him. He offered three other reasons for declining the technician position. First, Stech testified that the position required grammar, proofreading and typing skills. Stech believed that because he did not

have these skills, he would be fired during his probationary period. Second, Stech feared that because he had mold allergies, he would suffer adverse health consequences from working with moldy boxes of records. Finally, Stech testified that he believed that the technician position was a “dead-end” job without opportunities to use or develop his technical skills and that a demotion would look bad on his resume, which could negatively affect future employment prospects.

Stech did not ask for any training to improve his grammar, proofreading and typing skills prior to quitting his employment with Carver County. Stech testified that he did not request any remedial training because his previous requests for training during his employment were rejected for a lack of funding. Stech also did not ask for any medical accommodations prior to quitting his employment or cite health concerns as a reason he declined to accept the technician position. Stech acknowledged that Carver County renovated the basement and provided Stech with breathing filters in response to his previous complaints about any exposure to mold.

After the hearing, the ULJ found that Stech did not qualify for unemployment benefits because he failed to show that he quit his employment with a good reason caused by the employer or because of a medical condition. Stech requested reconsideration, arguing that the changes were sufficiently adverse to cause an average, reasonable worker to quit and that the new job was not suitable employment. The ULJ affirmed the denial of benefits, finding that the changes entailed in his change of position with the employer were not sufficiently adverse to compel an average, reasonable worker to quit and that

Stech failed to show that the new position was unsuitable. Stech now appeals by writ of certiorari.¹

DECISION

This court may modify, reverse, or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the findings or decision were affected by an error of law or "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d) (2010). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

A person who quits employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). One such exception allows eligibility if the employee "quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1). A good reason caused by the employer is directly related to the employment, is the employer's responsibility, is adverse to the worker, and would compel an average, reasonable worker to quit and become unemployed. *Id.*, subd. 3(a)(1)–(3) (2010). This exception only applies if the employee complains to the employer and affords the employer a reasonable opportunity to remedy the adverse condition. *Id.*, subd. 3(c) (2010). "[A] substantial pay reduction or an unreasonable

¹ On August 26, 2011, Stech was offered a new position by Carver County in the tax-services department. However, the circumstances of that employment do not bear on the current dispute. Moreover, we will not consider evidence not appearing on the record below. *Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990). As such, Stech's motion to this court to accept additional evidence is denied.

change in terms of employment gives an employee good cause for quitting.” *Wood v. Menard, Inc.*, 490 N.W.2d 441, 443 (Minn. App. 1992).

“The standard of what constitutes good cause [to quit] is the standard of reasonableness as applied to the average man or woman.” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 13 (Minn. App. 1986) (quotation omitted). “A good personal reason does not equate with good cause” to quit. *Kehoe v. Minn. Dep’t of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (quotation omitted). Good cause must be “real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances.” *Ferguson v. Dep’t of Emp’t Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n. 5 (1976).

The reason an employee quit employment is a question of fact. *Embaby v. Dep’t of Jobs & Training*, 397 N.W.2d 609, 611 (Minn. App. 1986). Whether the employee’s reason for quitting employment is a “good reason caused by the employer” is a question of law, reviewed de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003).

Stech does not dispute the ULJ’s factual findings that he voluntarily terminated his employment. Rather, he claims that the ULJ erred in rejecting his claim that he quit the employment because of a good reason caused by the employer. While the ULJ agreed that the changes accompanying the new position were adverse to Stech and were caused by the employer, the ULJ determined that such changes would not cause an average, reasonable employee to become unemployed rather than remaining in the employment.

The primary reason Stech gave for quitting was the reduction in pay associated with the new position. Though it is not a bright line, Minnesota courts have generally considered reductions in pay above fifteen percent to be unreasonable. *Compare Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn. 1981) (“When other courts have found no good cause for employment separation, the decrease in wages was less than 15 percent.”). *Cf. id.* at 85 (finding wage cuts of 21 to 26% were unreasonable), and *Danielson Mobil, Inc. v. Johnson*, 394 N.W.2d 251, 253 (Minn. App. 1986) (finding a 19% wage cut unreasonable), and *Rootes*, 669 N.W.2d at 418 (finding a wage cut of nearly 16% unreasonable), with *Dachel v. Ortho Met, Inc.*, 528 N.W.2d 268, 270–71 (Minn. App. 1995) (finding a 10% wage cut reasonable). The pay cut in this case was from \$22.31 to \$20.08 per hour, which is a cut of \$2.23 or ten percent.

In determining whether there was good reason for an employee to quit his employment because of a reduction in wages, the evaluator must consider not only the employee’s hourly wages, but consider “cash and *all remuneration of any nature other than cash.*” *Wood*, 490 N.W.2d at 444; *see* Minn. Stat. § 268.035, subd. 29(a) (2010) (“wages” include “all compensation for services,” including “vacation and holiday pay” and “sickness and accident disability payments”). Under these circumstances, the ULJ did not err in concluding that Stech’s pay cut associated with the technician position, along with a six-month probationary period, when combined with the continuation of other benefits, vacation accrual, and collective bargaining rights, did not constitute good reason for Stech to terminate his employment.

There was also evidentiary support for the ULJ's finding that Stech's other concerns with the technician position did not constitute good reasons that would compel an average, reasonable worker to quit and become unemployed. Stech presented numerous reasons for not accepting the technician position, including that he could be fired during his probationary period, that he was not qualified, that he would not be able to use his skills as a record-support analyst or have opportunity for advancement, and that he would have health issues while working with moldy boxes. But Stech did not actually experience these issues, rather they represent his speculation about potential problems. Moreover, he never communicated these concerns to his employer prior to terminating his employment and failed to give the employer a reasonable opportunity to address his concerns prior to quitting as he was required to do under Minn. Stat. § 268.095, subd. 3(c). Because Stech never accepted the technician position or worked with the employer to alleviate any potential adverse consequences of working in the new position, his speculation regarding possible adverse impacts was insufficient for the ULJ to find good reason for his termination of employment.

In conjunction with his request for reconsideration, Stech also claimed that he is eligible for unemployment benefits on the basis that the technician position was unsuitable. An applicant who quits employment "within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant" can be eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(3) (2010).

The applicability of this statute turns on when Stech began his employment. Here, Stech began his employment with Carver County in 2006. At the time of his termination,

Stech had worked as a record-support analyst for more than 30 days and had not yet begun his employment as a record-management technician. As a result, the statute is inapplicable because Stech did not quit within 30 calendar days of beginning his employment and never accepted employment as a record-management technician.

Because the ULJ correctly applied the law and there was substantial evidence supporting the findings, we conclude that the ULJ did not err in determining that Stech is ineligible for unemployment benefits.

Affirmed; motion denied.