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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2170**

Michael Clark,
Relator,

vs.

Hazmat Environmental Group, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 27, 2012
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 27413905-3

Michael J. Clark, Young America, Minnesota (pro se relator)

Hazmat Environmental Group, Inc., Buffalo, New York (respondent)

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

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment. We affirm.

FACTS

Relator Michael Clark worked as a truck driver for respondent Hazmat Environmental Group Inc. from May 2010 to January 2011. Hazmat drivers keep a driver's logbook and fill out a Hazmat bill of lading. Hazmat requires drivers to use the customer's time zone for the bill of lading and Eastern Standard Time for the driver's logbook. Because Clark believed that federal law required that the time entries in the bills of lading match the driver's logbooks, he did not follow Hazmat's requirements. As a result of Clark using the same time zone for both his driver's logbook and the bills of lading, Hazmat gave Clark several warnings for falsifying his driver's logbook.

Clark's truck was equipped with a Qualcomm system. The Qualcomm is a computerized communication system through which the driver receives messages and print-outs from dispatch. The system has a volume control to enable drivers to reduce the volume during their breaks; a red light alerts drivers that they have a message from dispatch.

On December 28, 2010, Hazmat asked Clark to pick up a shipment in Minnesota and deliver it to Belleville, Michigan, by 4:00 p.m., December 29. Clark began driving the afternoon of December 28 and continued until 4:15 a.m., December 29, when he began his off-duty status. Clark was in sleeper status from 4:30 a.m. to 2:15 p.m., except

for a 15-minute period commencing at 1:00 p.m. On December 29, while Clark was in sleeper status, Hazmat sent him a Qualcomm message, asking him to deliver his shipment five hours early, at 11:00 a.m. Hazmat also called him. Clark refused the request for early delivery; he made the delivery at the originally scheduled time.

On December 30, again during Clark's sleeper status, Hazmat sent Clark another Qualcomm message, instructing him to be in New York for a meeting on January 3. The next day, Clark gave Hazmat his two weeks' notice of his intent to quit, returned his truck to Hazmat in early January 2011, and filed for unemployment benefits.

Respondent Minnesota Department of Employment and Economic Development (DEED) determined Clark was eligible for unemployment benefits because he "quit because the employer was not following federal regulations" and he "expressed his concerns to the employer." Hazmat appealed, and a ULJ conducted a hearing. The ULJ found that Clark quit because of paperwork disputes and Hazmat's interruptions of his sleeper status on December 29 and December 30. The ULJ concluded that "Clark did not quit employment because of a good reason caused by Hazmat" and therefore determined that Clark was ineligible to receive unemployment benefits. Clark requested reconsideration, and the ULJ affirmed his decision.

Clark's certiorari appeal follows.

DECISION

This court may reverse or modify a ULJ's decision if, among other reasons, it is based on an error of law or on factual findings that are not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (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).

Clark does not dispute that he voluntarily quit his employment with Hazmat. An employee who voluntarily quits his job is ineligible for unemployment benefits, unless he quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2010). A "good reason caused by the employer" is one "(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) (2010). "Illegal conduct by an employer may constitute good cause for an employee to quit." *Hawthorne v. Universal Studios, Inc.*, 432 N.W.2d 759, 762 (Minn. App. 1988). In general, the employee must complain of the adverse conditions and give the employer a reasonable opportunity to correct them. Minn. Stat. § 268.095, subd. 3(c) (2010). But an employee need not first complain to preserve his ability to seek unemployment benefits when "an employer violates federal trucking laws related to the public safety." *Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn. App. 1992). Whether Clark quit for a good reason caused by Hazmat is a question of law, which we review de novo. *Rootes v. Wal-Mart Assocs.*, 669 N.W.2d 416, 418 (Minn. App. 2003).

Clark argues that he quit because he refused to violate federal regulations concerning the time zone in which he logged his time and his hours of service. He also

disputes the ULJ's finding that he could have turned off the volume on the Qualcomm and argues that Hazmat "forfeited" the case when it gave the ULJ incorrect telephone numbers. We address each argument in turn.

Driver's Logbook Time Zone

Clark argues that he quit because he was being disciplined for using Eastern Standard Time in his driver's logbook and the bills of lading when, in fact, federal regulations require that the times on the driver's logbook and the bills of lading match. The ULJ found that Hazmat "instructed Clark to log his time on Eastern time," and from the context of the ULJ's finding, it appears that Hazmat instructed Clark to log his time *in his driver's logbook* in Eastern Standard Time. The ULJ found that Clark had occasionally recorded his hours in his driver's logbook using Central time. The ULJ also found that "Hazmat required the driver to record the time on the *bill of lading* using the customer's local time, whereas Clark used Eastern time so that it would match the [driver's] logbook." (Emphasis added.) Contrary to Clark's contention about the federal regulations, the ULJ cited a federal regulation requiring only that the time in a driver's logbook be recorded "using the time standard in effect at the driver's home terminal," 49 C.F.R. § 395.8(f)(8)(i) (2010), and acknowledged that the time standard in effect at Hazmat's home terminal is Eastern time. The ULJ noted that Hazmat had given Clark warnings for improperly logging his time and concluded that "Hazmat had a right to expect that Clark would properly log his hours and it had the right to discipline him for his failure to do so."

Clark's argument that he logged his time in accordance with federal regulations is unpersuasive. The only regulation that Clark cited to the ULJ—and the only applicable regulation that this court could locate—dictates how time is to be recorded in a driver's logbook. *See* 49 C.F.R. § 395.8(f)(8)(i) (directing that time in driver's logbook be recorded "using the time standard in effect at the driver's home terminal"). Therefore, Hazmat's requirement that Clark use Eastern Standard Time for his driver's logbook and the customer's local time for the bills of lading was not adverse to Clark because Hazmat's requirement neither violated federal regulations nor forced Clark to violate them.

We conclude that Hazmat's requirement that its drivers use the customer's time zone for the bill of lading and Eastern Standard Time for their logbooks did not give Clark a good reason to quit his employment.

Hours-of-Service Regulations

Clark seems to argue that he quit because Hazmat asked him to drive more than the maximum hours allowed in federal hours-of-service regulations. The legal determination that an employee quit without good reason "must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Here, the ULJ did not find that Clark quit because he was asked to drive excessive hours; rather, the ULJ found that Clark quit "primarily because of disputes over his paperwork and his dissatisfaction with Hazmat contacting him [through] Qualcomm during his sleeper hours." We "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus*, 721 N.W.2d at

344. Clark's testimony at the hearing focused on his frustrations with the time zones in his paperwork and being contacted during his sleeper status. We therefore conclude that substantial evidence supports the ULJ's finding that Clark quit primarily because of paperwork disputes and because he was disturbed during his sleeper status.

Clark also argues that, in his request for reconsideration, he recounted seven incidents in which Hazmat asked him to drive excessive hours. But a ULJ "must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing." Minn. Stat. § 268.105, subd. 2(c) (2010). Clark neither offered evidence of these incidents at the evidentiary hearing nor requested an additional evidentiary hearing. We therefore decline to consider Clark's evidence. *See Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988) (noting that appellate courts "may not consider matters not produced and received in evidence below").

Qualcomm Volume and Hazmat's Forfeiture

Clark seems to challenge the ULJ's finding that the Qualcomm had a volume control that enabled a driver to reduce the volume so that his sleep would be undisturbed. Clark asserts that although he could have reduced the volume on the Qualcomm, he understood from Hazmat's orientation that the Qualcomm was to remain on at all times. But Clark did not give this information to the ULJ at the hearing. Because this court "may not consider matters not produced and received in evidence below," *id.*, we decline to consider Clark's argument.

Clark also argues that because the ULJ tried to reach Hazmat representatives at multiple telephone numbers, Hazmat “forfeited the case for not appearing according to the instructions given.” But he cites no authority for his forfeiture argument. An argument that is not supported by authority is waived unless prejudicial error is obvious, *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997), and none is obvious here.

Affirmed.