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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-484**

Jeffrey Crotty,
Relator,

vs.

Leeann Chin, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 13, 2012
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 26318009-3

Jeffrey Crotty, St. Paul, Minnesota (pro se relator)

Leeann Chin, Inc., Bloomington, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Jeffrey Crotty quit his job as the general manager of a Leeann Chin restaurant to accept an offer to be an office manager for Rapids Food Service. But the offer was withdrawn before Crotty started the new job. An unemployment law judge determined that Crotty quit his job at Leeann Chin for a job that did not offer substantially better terms and conditions of employment, and, thus, is ineligible for unemployment benefits. We agree and, therefore, affirm.

FACTS

Crotty worked for Leeann Chin, Inc., for approximately eight months, from February to October of 2010. In September 2010, Crotty accepted a position at Rapids Food Service because he believed that it would allow him to work “better hours.” He quit his job at Leeann Chin in anticipation of an October 18, 2010 start date at Rapids Food Service. Before that date, however, Rapids Food Service withdrew the job offer because they learned, apparently for the first time, that Crotty did not have a personal vehicle, which was necessary because the office manager was expected to travel to various locations in the Twin Cities metropolitan area.

Crotty applied for unemployment benefits. The Department of Employment and Economic Development (DEED) made an initial determination that Crotty is ineligible for benefits. Crotty filed an administrative appeal of the initial determination. In December 2010, after an evidentiary hearing, an unemployment law judge (ULJ) determined that Crotty is ineligible for unemployment benefits because he quit his job at

Leeann Chin to accept a job that did not offer substantially better terms and conditions of employment. Crotty filed a request for reconsideration, arguing that the position at Rapids Food Service would have offered substantially better terms and conditions of employment because it would have allowed him to spend more time with his children. The ULJ affirmed his earlier order. Crotty appeals by way of a writ of certiorari.

D E C I S I O N

Crotty argues that the ULJ erred by determining that the position at Rapids Food Service would not have offered substantially better terms and conditions of employment than his position at Leeann Chin. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2010). The ULJ's factual findings are reviewed in the light most favorable to the decision and will not be disturbed if they are substantially sustained by the evidence. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 580 (Minn. App. 2010). However, the ULJ's ultimate conclusion that an applicant is ineligible to receive unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.* at 579.

Generally, an employee who quits employment is not eligible for benefits. *See* Minn. Stat. § 268.095 (2010). An exception exists if the employee quit

to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy

the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment

Id., subd. 1(2). “The new position must not simply be ‘better,’ but must be ‘substantially better.’” *Grunow*, 779 N.W.2d at 580. “Whether the new employment is substantially better is based on an objective comparison of the positions’ terms and conditions, and not a comparison of which position is more suitable to the personal needs of an individual employee.” *Id.* (quotation omitted).

At the evidentiary hearing before the ULJ, Crotty testified that his salary at Leeann Chin was \$50,000 per year and that he worked an average of 52 hours per week, sometimes on weekends. A representative of Leeann Chin testified that Crotty could have earned a bonus of as much as \$1,875 each quarter, or \$7,500 per year. Crotty testified that the position at Rapids Food Service would have paid him a salary of \$45,000 per year but would have required him to work only 40 hours per week, without any work on weekends. Crotty also could have earned a bonus of as much as \$5,000 per year. In addition, there was evidence suggesting that the position at Rapids Food Service might have paid him a \$300 monthly car stipend.

The ULJ concluded that the “reduction in hours combined with the reduction of pay was not enough to be determined ‘substantially better’ under the Minnesota unemployment insurance law.” This conclusion was not erroneous. Crotty would have earned a lower base salary at Rapids Food Service, and his bonus potential also would have been lower. He would have been allowed to work fewer hours and, thus, spend more time with his family. But, as noted in *Grunow*, “while a person may,

understandably, choose to accept a position that would allow him or her to spend more time with family, this is not an objective measure of whether the new position has substantially better terms and conditions.” 779 N.W.2d at 581. Rather, an employee’s decision to accept reduced compensation as a trade-off for additional leisure time is a “very subjective, ‘personal’” consideration. *Id.* at 580. And even if a reduced number of hours were deemed an objective term of employment, we still would not say that the terms and conditions of the position at Rapids Food Service would have been “substantially” better. *See id.* at 580-81. Even if it were possible to objectively consider the combination of salary and the necessary amount of hours to be worked, neither position at issue in this case can be said to be “substantially” better than the other.

In sum, the ULJ did not err by determining that Crotty is ineligible for unemployment benefits.

Affirmed.