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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-689**

Dennis J. Bartholow,
Relator,

vs.

SJF Material Handling, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 3, 2012
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 26706194-3

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Minnesota (for relator)

SJF Material Handling, Inc., Winsted, Minnesota (respondent)

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

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges a decision of an unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he quit without a good reason caused by his employer. We affirm.

FACTS

Relator Dennis Bartholow began employment with respondent SJF Material Handling, Inc., in October 2003 as a full-time outside sales representative. Bartholow worked primarily out of SJF's company offices located in Winsted, unless traveling or on vacation. Bartholow was expected to travel in his position, and he did so approximately five to ten percent of the time. At SJF's office, Bartholow had a cubicle and a phone, but he also had a company-issued laptop computer and cell phone to facilitate his work while traveling. Bartholow was not allowed to use his work cell phone for work purposes when he was not traveling, because SJF expects customer communication to occur through its company phone system and SJF tracks all calls on its office phones.

Bartholow's employment with SJF was governed by a written employment agreement. The agreement includes a section entitled "Expenses and Support," which contains a paragraph stating the following: "If the employee chooses a home office, he/she will be responsible for providing her/himself an office; fax and other business machines outside those outlined above and will incur all expenses for these items." On December 1, 2010, Bartholow told SJF president Stafford Sterner that he planned to work from home, pursuant to the "home office" clause, because he could no longer afford to

drive to the office from his home in Prior Lake. After Sterner informed Bartholow that working from home was not an option, Bartholow packed his belongings and left work early.

The next day, December 2, Bartholow did not report to work or call in. SJF's controller sent Bartholow an e-mail indicating that his absence was unexcused, that he was required to work at the corporate office, and that he was expected to report to work at the office the next day. On December 3, Bartholow again failed to report to work at the office. An SJF representative once again informed Bartholow by telephone that he could not work from home and was expected to report to work on Monday, December 6. SJF's vice president, Frank Sterner, also sent Bartholow a letter informing him that the letter was his "final notice" to return to work immediately. Bartholow did not report to work on December 6. Instead, he sent an e-mail reiterating his position that the employment agreement allowed him to work from home. On December 7, SJF sent Bartholow a letter stating that SJF accepted his voluntary resignation. SJF also shut off service to Bartholow's company cell phone and revoked his access to its computer system.

Bartholow applied for unemployment benefits and was deemed eligible to receive benefits on December 23, 2010. SJF appealed the determination and requested an evidentiary hearing. On February 1, 2011, a ULJ reversed the earlier determination of eligibility, finding that Bartholow had quit employment without good reason caused by the employer. This determination resulted in an overpayment of unemployment benefits in the amount of \$4,044. Bartholow filed a request for reconsideration, and the ULJ's determination was affirmed on March 21. This certiorari appeal follows.

DECISION

When reviewing an unemployment-benefits decision by a ULJ, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law, unsupported by substantial evidence in the record, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (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.*

Bartholow contends that he was discharged from employment. Alternatively, Bartholow contends that he quit for a good reason caused by SJF. 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. Sept. 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). "A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.* subd. 5(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. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 896 (Minn. App. 1993).

Bartholow first challenges the ULJ's determination that his employment ended when he "quit" and "would not return to work." Bartholow contends that he was discharged, arguing that he expressed his "intention to work from his home" to SJF's president before leaving the office on December 1, 2010, and was "available for work and performed work" before SJF cut off his cell-phone service and revoked his access to the company's computer network. Respondent Department of Employment and Economic Development (DEED) argues that Bartholow voluntarily quit by not reporting to work and observes that he "reported that he quit employment at SJF when he applied for benefits." DEED also emphasizes that "[o]ngoing work was available to Bartholow" if he worked from the SJF office and that Bartholow "chose not to accept it."

The ULJ's determination that Bartholow quit is supported by substantial evidence. Bartholow exercised a free-will choice to leave his employment with SJF when he refused to report to work at the SJF office after he repeatedly was told that SJF would not allow him to work from home, that his absences were unexcused, and that his employment would be terminated if he did not report to work at the SJF office. Bartholow even reported that he "quit" on his application for benefits. Accordingly, the ULJ appropriately determined that Bartholow quit employment with SJF.

Bartholow next contends that if he quit, it was for a good reason caused by SJF. An applicant who quits employment is ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2010). One such exception exists when the employee's decision to quit was for a good reason caused by the employer. *Id.* A good reason caused by the employer for quitting 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. *Id.* subd. 3 (2010). Whether an employee had good cause to quit is a question of law, which this court reviews de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). The ULJ determined that SJF’s expectation that Bartholow work from the company office would not cause “an average reasonable employee [to] quit.”

Bartholow argues that SJF’s refusal to allow him to work from home constitutes good reason for quitting caused by his employer. He also argues that his increased commuting expenses and a need to care for his parents necessitated his working from home and that SJF “breached the terms of the employment agreement” because his contract allowed him to have a home office. Bartholow argues that the “home office” clause in his employment contract is ambiguous and that the “ambiguity should be resolved against SJF.” The ULJ determined that the contract language “does not support that [Bartholow] could choose to work at home” and that “the conduct of the parties throughout the employment support that Bartholow was expected to work at the Winsted office.”

We need not consider whether the “home office” clause in Bartholow’s employment agreement is ambiguous. Assuming for the sake of argument that the agreement could be construed as providing an exclusive home-office option as Bartholow argues, we conclude that an average, reasonable worker would not be compelled to quit and become unemployed because his employer refused to allow him to exercise a home-

office option after the employee consistently worked from employer's office for *seven* years. SJF's expectation that Bartholow continue to report to work at the Winsted office as he had throughout his seven-year term of employment is not an "adverse" reason that "would compel an average, reasonable worker to quit and become unemployed." *See* Minn. Stat. § 268.095, subd. 3. Accordingly, we affirm the ULJ's decision that Bartholow is ineligible to receive unemployment benefits.

Affirmed.

Dated:

Judge Michelle A. Larkin