STATE OF MINNESOTA
IN COURT OF APPEALS
A11-731

Marvin Tuma,
Relator,

vs.

Farmers Mill and Elevator, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 27, 2011
Affirmed
Collins, Judge[*]

Department of Employment and Economic Development
File No. 26920107-3

Marvin L. Tuma, Northfield, Minnesota (pro se relator)

Farmers Mill and Elevator, Inc., Castle Rock, Minnesota (respondent employer)

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

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

COLLINS, Judge

Relator Marvin Tuma challenges the decision of an unemployment-law judge (ULJ) ruling him ineligible for unemployment benefits. Tuma argues that (1) he was discharged and did not quit, (2) he was unaware of the employer's policy and procedure for requesting leave, and (3) the ULJ ignored new evidence that Tuma submitted with his request for reconsideration. Because, as determined by the ULJ, Tuma voluntarily quit his employment without requesting medical accommodation from the employer, and because the ULJ did not abuse his discretion by disregarding new evidence on reconsideration, we affirm.

FACTS

Tuma was employed by respondent Farmers Mill and Elevator Inc. from April 2003 until May 5, 2010. Tuma applied for unemployment benefits and respondent Department of Employment and Economic Development determined that Tuma quit his employment and was ineligible for unemployment benefits. Tuma appealed and a telephonic hearing was held before a ULJ.

The employer, through its owner, testified that on May 5, 2010, Tuma left work before his shift ended without notifying the employer. The employer and Tuma's supervisor testified that Tuma did not inform them why he left or whether he intended to return to work. The supervisor testified that leave-request forms are available next to the employee time clock and Tuma had used these forms "many times" before. But Tuma did not submit a leave-request form on this occasion, and Tuma testified that he did not

discuss a leave of absence with the employer before he left. The next day, the employer hired someone to replace Tuma.

The ULJ determined that Tuma voluntarily quit his employment when he left before the end of his shift on May 5, 2010, without informing his supervisor. Although the ULJ found that Tuma suffered from significant injuries and pain to his back, hips, and right arm that interfered with his ability to perform his job duties, the ULJ also found that Tuma failed to inform the employer of his medical problems or request accommodation for his condition. The ULJ concluded, therefore, that Tuma was not entitled to unemployment benefits under the medical exception to ineligibility. Tuma requested reconsideration and submitted affidavits as new evidence, but the ULJ declined to consider the new evidence and affirmed his previous decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010). We view the ULJ's factual findings in the light most favorable to the decision and defer to the

ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

I.

Tuma contends that he was discharged and did not quit. We disagree. "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 "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). Whether an employee voluntarily quit or was discharged is a question of fact. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Tuma testified that he "was unable to continue because of [my] back and leg pain, so, according to your definition, yes, [I] quit." The record also contains Tuma's unemployment-insurance-request-for-information questionnaire, in which Tuma admitted that he quit. And the employer and Tuma's supervisor testified that Tuma left work before the end of his shift without notifying his supervisor or informing them that he intended to return to work. The ULJ credited this evidence. Although Tuma testified that he had intended to return to work, the ULJ discredited this testimony. Therefore, the record substantially supports the ULJ's finding that Tuma voluntarily quit his employment.

II.

An applicant is ineligible to receive unemployment benefits if the applicant voluntarily quit the employment unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). One such exception applies when the applicant quit because of a "serious illness or injury [that] made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7)(i). But "[t]his exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*, subd. 1(7). Here, the evidence establishes that the employer has a policy requiring employees to submit a leave-request form for review and approval. And in Tuma's unemployment-insurance questionnaire, he admits that he did not request accommodation for his medical condition or give notice to the employer before June 2010. Moreover, Tuma testified that he did not request a leave of absence, and the employer testified that the only contact Tuma had with the employer between May 5 and October 2010 was a telephone call regarding Tuma's final paycheck. The ULJ credited this evidence. Therefore, the record substantially supports the ULJ's finding that Tuma did not inform the employer of his medical problem or request a leave of absence or other accommodation for his condition.

Tuma contends that he was unaware of the existence of an employee handbook or the employer's leave-request policy and procedure. But (1) the employer testified that employees receive a copy of the employee handbook, which contains the employer's leave-request policy and procedure, upon hiring; and (2) Tuma's supervisor testified that the leave-request forms are available next to the employee time clock and Tuma was

aware of these forms and had used them "many times" before. Therefore, the record substantially supports the ULJ's finding that Tuma was aware of the employer's leave-request policy.

The record contains ample support for the ULJ's finding that Tuma voluntarily quit his employment without informing the employer of his medical problem or requesting accommodation for his condition. Therefore, the ULJ did not err by concluding that Tuma is not entitled to unemployment benefits under the medical exception to ineligibility.

III.

Tuma also argues that the ULJ erred by ignoring new evidence that he submitted with his request for reconsideration. We disagree. "In deciding a request for reconsideration, the [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). But the ULJ must hold an additional evidentiary hearing if the party proposing new evidence is able to show that the new evidence likely would change the outcome of the decision and that the party had good cause for not previously submitting the evidence. *Id.* We review the ULJ's decision to grant or deny an additional evidentiary hearing for an abuse of discretion. *Vasseei v. Schmitty & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010).

Tuma submitted two affidavits, prepared by himself and his wife, with his request for reconsideration. The affidavits assert that on May 5, 2010, and on multiple occasions

in the weeks thereafter, Tuma notified the employer of his medical condition and his intent to return to work. The ULJ declined to consider the substance of these affidavits because Tuma did not adequately explain why such evidence was not offered at the hearing or why his testimony had changed. In his request for reconsideration, Tuma contended that he had not presented this evidence previously because he had neither researched nor been aware of these issues at the time of the hearing. But the factual assertions made in the affidavits were within Tuma's knowledge and he was given the opportunity to testify regarding such central issues at the hearing. Moreover, as the ULJ also observed, Tuma's affidavits contradict evidence in the record that the ULJ found credible. Therefore, the ULJ did not abuse its discretion by declining to consider the substance of the affidavits as new evidence.

Affirmed.