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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1651**

Michael L. Fay,
Relator,

vs.

5 Star Field Services LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 17, 2013
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 29678530-3

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and

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5 Star Field Services, LLC, St. Paul, Minnesota (respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Harten, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

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

FACTS

On November 4, 2011, relator Michael L. Fay began working part-time as a laborer for 5 Star Field Services (5 Star). On April 16, 2012, relator applied for unemployment compensation benefits after having been told that he was eligible to receive benefits if he was working less than 32 hours per week. On April 21, 5 Star's owner, Terry Hammerstrom, asked relator to sign an independent contractor agreement backdated to the date relator began employment. Relator became "hostile and refused to sign it." Hammerstrom claims that all 5 Star workers were typically asked to sign such an agreement when they began work, but that relator's contract had "slipped through the cracks."

On April 23, Hammerstrom again asked relator to sign the agreement, but relator "became extremely emotional and walked off the job site and sat in the truck a good portion of the day." Later that day, relator "[c]almed down [and] came back to work for a couple of hours." Hammerstrom offered relator a raise of one dollar per hour, but relator again refused to sign the agreement. Hammerstrom then told relator, "you need to think about it, grab your tools you're not working today, turn in your hours." Relator did not return to work the next day.

On April 25, Hammerstrom went to check up on his houseboat and found relator sleeping inside. Although relator had previously done work on the boat, he did not have permission to sleep on it. Hammerstrom had a “straight forward” conversation with relator, during which “it seemed like [relator] wanted to work, he [knew] he was good at what he did, and he knew he had a position.” Hammerstrom told relator that he could continue working without signing the independent contractor agreement. Relator indicated that he felt “underpaid and not very much appreciated” and that he could find a better-paying job elsewhere. Hammerstrom testified that he thought that he had convinced relator to “turn around and give [him] some—hours and he would come [aboard].” Hammerstrom ended the conversation by telling relator, “I wish you the best.”

On May 30, the Minnesota Department of Employment and Economic Development (DEED) determined that relator had been a 5 Star employee and that he was eligible to receive unemployment benefits. 5 Star appealed the decision, and a de novo hearing was held before a ULJ in July 2012. Hammerstrom and relator participated in the hearing.

At the hearing, relator repeatedly denied having been on the houseboat and having talked with Hammerstrom on April 25, 2012. Hammerstrom indicated that he had photographic evidence showing that relator had been sleeping on the boat that day. At the conclusion of the hearing, relator asked to change his previous testimony and admitted that he had slept on the boat on April 25, but he continued to deny Hammerstrom’s version of the conversation. Instead, relator insisted that Hammerstrom

had told him that he was no longer an employee. Relator agreed that he did not return to work for 5 Star after seeing Hammerstrom on the houseboat on April 25.

The ULJ found that relator had quit his employment effective April 25, 2012, because “he did not want to sign the independent contractor agreement and he felt that he was underpaid and underappreciated,” resulting in his ineligibility to receive unemployment benefits. Relator filed a request for reconsideration on July 11. On August 14, the ULJ reaffirmed relator’s ineligibility for benefits but modified her decision by finding that, because Hammerstrom had told relator that he could continue working for 5 Star without signing the independent contractor agreement, relator had quit his employment solely “because he felt that he was underpaid and underappreciated.” This certiorari appeal followed.

D E C I S I O N

Relator challenges the ULJ’s determination that he quit his employment on April 25, 2012, without a good reason caused by his employer.

We review a ULJ’s decision to determine whether “the substantial rights of a petitioner may have been prejudiced because, among other things, the decision is affected by an error of law or is unsupported by substantial evidence in view of the entire record as submitted.” *Nelson v. Levy*, 796 N.W.2d 336, 339 (Minn. App. 2011) (citing Minn. Stat. § 268.105, subd. 7(d) (2010)). There is no presumption of eligibility for unemployment insurance benefits. Minn. Stat. § 268.069, subd. 2 (2012). We review 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).

“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) (2012). “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) (2012).

An applicant is disqualified from receiving unemployment upon quitting employment, unless one of ten statutory exceptions applies. *Id.*, subd. 1 (2012). One exception provides for benefits eligibility when the applicant quits for “a good reason caused by the employer.” *Id.*, subd. 1(1).

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(a) (2012). Whether an employee had good cause to quit is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). But the reason why an employee quit employment is a factual question determined by the ULJ. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (examining why an applicant quit as a question of fact). “[F]indings that are supported by substantial evidence will not be disturbed.” *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007); *see* Minn. Stat. § 268.105, subd.

7(d)(5). Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Relator argues that he is eligible for unemployment benefits because he was discharged from employment with 5 Star on April 23, 2012. The ULJ found by a preponderance of the evidence that relator quit on April 25. The ULJ assessed the parties' credibility and chose to accept Hammerstrom's version of events, which she deemed more accurate than relator's, noting:

[Relator]'s argument is not found to be as plausible or credible as Hammerstrom's testimony that he last spoke with [relator] on April 25, 2012, when he found [relator] on his houseboat, and that he told [relator] that he could still work for him even if he did not sign the agreement. Where [relator] admitted at the end of the hearing that he lied about not seeing Hammerstrom on April 25, 2012, and that he did in fact squat on Hammerstrom's houseboat, it is more likely that Hammerstrom's account of what happened April 25, 2012, is [more] accurate than [relator]'s.

The ULJ found that Hammerstrom asked relator to sign the independent contractor agreement on April 21 and April 23. On April 23, although relator became upset and stormed off the worksite, he later returned. Hammerstrom offered relator a raise, but relator again refused to sign the agreement. Hammerstrom asked relator to continue to consider the agreement to report his hours to date because his future compensation would be calculated at a higher rate. Hammerstrom testified that he did not discharge relator.

Thus, there is substantial evidence in the record to show that relator quit his employment for 5 Star on April 25, 2012.

Relator argues that the ULJ should not have considered any post-April 23, 2012 events to determine whether relator quit or was discharged. But the ULJ found that relator's employment ended when he quit on April 25, 2012, and not earlier. Making a credibility determination, the ULJ adopted Hammerstrom's version of the April 25 events, including that Hammerstrom told relator that he could continue working without signing the agreement. Given the factual findings of the ULJ, the events of April 25 are relevant and provide substantial evidence that relator quit.

Relator further argues that Hammerstrom's words or actions on April 23 would have led a reasonable employee to believe that he had been discharged. The ULJ found as a fact that relator's employment was not made contingent on his signing the agreement. The ULJ's findings are supported by the record, including that relator continued to maintain ties with Hammerstrom by sleeping on his houseboat, and did not indicate prior to April 25 that he would not be returning to work. On April 25, Hammerstrom told relator that he could continue working without signing the agreement, but relator did not report to work after that day. Although the record would have supported different findings, the ULJ's finding that relator quit his employment is substantially supported by the record. As such, it is not for this court to substitute our finding for those of the ULJ. *See Skarhus*, 721 N.W.2d at 344.

Relator next argues that if he quit his employment, it was only due to 5 Star's insistence that he sign an independent contractor agreement. Whether an employee is not

disqualified from receiving benefits because he had a good reason to quit is a question of law, which we review de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). A good reason must be “compelling, . . . real and not imaginary, substantial and not trifling, reasonable and not whimsical or capricious.” *Ferguson v. Dep’t of Emp’t Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 (1976). Whether an employee had good cause to quit is determined by reference to the average reasonable person rather than the supersensitive. *Gonsior v. Alt. Staffing, Inc.*, 390 N.W.2d 801, 805 (Minn. App. 1986), *review denied* (Minn. Aug. 27, 1986). Mere dissatisfaction or disagreement with an employer over job duties or requirements is not necessarily a good reason for quitting caused by the employer. *See Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (stating that good cause does not apply to situations where the employee is simply frustrated or dissatisfied with coworkers or working conditions).

The ULJ found that, because 5 Star had a reasonable belief that its staff members were independent contractors, its request that relator sign the same agreement was also reasonable. The ULJ also found as a fact that Hammerstrom was willing to allow relator to continue working for 5 Star even without signing the agreement. The parties disagreed on the issue of the independent contractor agreement, but the ULJ found that relator quit after expressing dissatisfaction with being “underpaid and underappreciated.” The ULJ found that an average, reasonable employee “would not be compelled to quit and become unemployed” under the circumstances. Because relator refused to work knowing that the independent contractor agreement was not a condition of employment, the ULJ did not

err concluding that relator quit his job without a good reason caused by the employer.

Therefore, he is ineligible to receive unemployment benefits.

Affirmed.