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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2112**

Charles Bachmann,
Relator,

vs.

Triangle 66 Oil Company, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 1, 2013
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 30140418-3

Charles Bachmann, Brainerd, Minnesota (pro se relator)

Triangle 66 Oil Company, Inc., Baxter, Minnesota (respondent)

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

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this certiorari appeal, relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment. We affirm.

FACTS

Relator Charles Bachmann began his employment with respondent Triangle 66 Oil Company, Inc., in December 2008. Bachmann worked with Triangle as a full-time transport driver until his employment ended in August 2012. After his employment ended, Bachmann applied for unemployment benefits and respondent Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible for benefits because he had quit his employment. Bachmann appealed DEED's determination, and a ULJ conducted an evidentiary hearing.

Craig Holland, president of Triangle, testified at the hearing that, in June 2012, Triangle asked Bachmann if he would change his shift for the summer from Tuesday through Sunday to Monday through Friday, and Bachmann agreed. On August 17, Holland informed Bachmann in a note: "Beginning the week of August 26th we will be changing your schedule back to Tuesday thru Saturday as was discussed last spring. You will have Monday the 27th off and work the 28th thru Sept 1st." Bachmann called Holland on August 17, stating that he was not happy with the shift—the change in his working schedule—and that it was time for him to move along. He also said that he hoped that Holland would give him a good reference. Holland believed that Bachmann had quit, and

he told Joan Olson, the main dispatcher at Triangle, and Todd Holland, the vice-president of Triangle, that Bachmann had quit. Olson corroborated Holland's testimony, testifying that, on August 17, Holland told her that Bachmann was no longer with Triangle and had decided to move on. Olson therefore removed Bachmann from the work schedule. Bachmann called Olson on August 21, and she told him that she was under the impression that he no longer worked for Triangle and that she would have to talk with Holland before she dispatched any more loads to him.

On August 22, Holland had three phone conversations with Bachmann. Holland testified that during the first conversation, Bachmann asked Holland why he had not received any work, and Holland told Bachmann that he thought Bachmann had quit. Bachmann denied quitting, and Holland told Bachmann that he would think about it and call Bachmann. Holland testified that he called Bachmann, and said that he "wanted to leave it that [Bachmann] had quit," and, at that point, Bachmann said that "he had not quit and that we should fire him or there would be trouble." When the call ended, Holland told one of his business partners that he felt threatened by Bachmann's statement. Holland then called Bachmann again and told him that Triangle would say that it "terminated his employment." Holland testified that Bachmann told him that he "better give him a good reference or there would be trouble," at which point Holland told Bachmann to stop threatening him and hung up the phone.

Bachmann testified about the three telephone conversations with Holland on August 22. Bachmann testified that he told Holland that he had not quit and asked for temporary work until he found a new job; Holland said he would think about it.

Bachmann acknowledged that Holland then called him and told him that Triangle was “standing by that [Bachmann] quit” and that Bachmann then told Holland that “I’m not a kid, . . . there’s gonna be some trouble about this, I’m gonna fight it.” Bachmann testified that what he meant by “there’s gonna be some trouble” was that he was going to contact a lawyer and possibly sue Holland. Bachmann also testified that Holland called him back and said that Triangle would “terminate” him so that he could receive “unemployment.”

Bachmann also testified that, in late July or early August, he asked Holland for a raise so that he would receive the same pay as the other employees who worked the same shift. Bachman testified that Holland told him that he would give Bachmann a raise if Bachmann would go on a “five and three.”¹ Bachman interpreted Holland’s August 17 letter as a rejection of his request. Frustrated, Bachmann called Holland on August 17 and said, “[t]his means I’m not getting no pay increase, correct”; Bachmann received no reply from Holland and then said, “I’ve had enough, would you at least give me a good job reference.” Bachmann denied saying that “it’s time to move along.”

The ULJ found that Bachmann quit his employment with Triangle; did not withdraw his notice of quitting during his conversation with Holland on August 22, 2012; and was ineligible for unemployment benefits. Bachmann requested reconsideration, and the ULJ affirmed his decision.

This appeal by writ of certiorari follows.

¹ “[F]ive and three” refers to a driving rotation for Triangle’s transport drivers. The transport drivers share a truck, and the driver working the “five and three” works five days and has the following three off, and the other driver works three days and has the following five off. Drivers working the five and three make more than drivers like Bachmann, whom Triangle “paid by the load.”

DECISION

Quit Determination

Bachmann challenges the ULJ's determination that he quit his employment, arguing that he "did not say I quit my job to anyone in the company" but, rather, only "asked for a good reference." This court may reverse or modify a ULJ's decision if the relator's substantial rights were prejudiced by findings, inferences, or a decision "affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (2012).²

An applicant for unemployment benefits is ineligible if he quits employment, unless he falls under a statutory exception to ineligibility. Minn. Stat. § 268.095, subd. 1 (2012). "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 (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." Minn. Stat. § 268.095, subd. 5(a) (2012). "Whether an employee has been discharged or voluntarily quit is a question of fact subject to our deference." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). This court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Rowan v. Dream It, Inc.*, 812

² We cite the most recent version of Minn. Stat. § 268.095 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case"). For the same reason, we also cite the current versions of other statutes and rules cited in this opinion.

N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted). “In unemployment benefit cases, the appellate court is to review the ULJ’s factual findings in the light most favorable to the decision” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted).

Here, the ULJ explicitly found Holland’s testimony more credible than Bachmann’s. “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2012). This court “defer[s] to the ULJ on credibility determinations,” *Wiley v. Dolphin Staffing–Dolphin Clerical Grp.*, 825 N.W.2d 121, 124 (Minn. App. 2012), *review denied* (Minn. Jan. 29, 2013), so long as they are “supported by substantial evidence,” *Ywsfw v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 527 (Minn. App. 2007). We defer to the ULJ’s ability to weigh conflicting evidence. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006); *see also Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.”).

The ULJ explained his credibility determination. Bachmann testified that he was dissatisfied with his job at Triangle and that, after receiving the letter on August 17, he believed he had been turned down in his request for a pay raise and had reached “total frustration.” He admitted that he called Holland on August 17 and told him that he had “had enough” and hoped that Triangle would give him a good reference. The ULJ

explained that the “sequence of facts and events” to which Holland testified was “consistent, logical, and more believable than Bachmann’s version,” and Olson’s testimony corroborated Holland’s testimony.

We conclude that the ULJ properly provided statutorily required reasons for crediting and discrediting the testimony at the evidentiary hearing in accordance with Minn. Stat. § 268.105, subd. 1(c), and we conclude that substantial evidence supports the ULJ’s determination that Bachmann quit his employment with Triangle.

Good Cause

At the hearing, Bachmann suggested that he quit his employment because of dissatisfaction about driving an unsafe truck and denial of a requested pay raise. We liberally construe Bachmann’s complaints as good-cause-to-quit arguments. “Whether an employee had good cause to quit is a question of law, which we review de novo.” *Rowan*, 812 N.W.2d at 883 (quotation omitted). An employee who quits his employment is not disqualified from unemployment benefits if he quit “because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1). A “good reason” 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.” Minn. Stat. § 268.095, subd. 3(a) (2012). “[T]o constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances.” *Rowan*, 812 N.W.2d at 884 (quoting

Ferguson v. Dep't of Emp't Servs., 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976) (quotation omitted)). Before quitting due to adverse working conditions, the employee must “complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions.” Minn. Stat. § 268.095, subd. 3(c) (2012).

Bachmann testified that he complained to Olson about a truck-safety issue but did not complain to either of the Hollands. Bachmann also testified that Triangle fixed the truck the next day and acknowledged that the truck had recently undergone a five-year inspection. Holland testified that Triangle fixed the truck as soon as Olson notified management of the problem; that the truck had “been in for an extensive five year inspection”; and that Triangle did not “knowingly send unsafe equipment down the road.” The ULJ made credibility determinations that informed his determination that Bachmann did not have good cause to quit his employment because of a lack of safety of Triangle’s truck, and the record shows that Triangle addressed the safety concern.

As to the pay issue, this court has concluded that wage reductions can provide good reason for an employee to quit, *see Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 419 (Minn. App. 2003) (concluding that a wage reduction, along with “changed hours, and weekend shifts,” provided good cause for an employee to quit), and that the breach of a promise to increase an employee’s pay could provide good cause to quit, *see Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 553–54 (Minn. App. 2003) (holding that, where employer orally promised to give a raise to employee and then failed to do so, employee had good cause to quit), *review denied* (Minn. Sept. 24, 2003). But, here, the

record contains no evidence that Bachmann complained to Triangle management about not getting his pay raise, as required by Minn. Stat. § 268.095, subd. 3(c); that Triangle reduced Bachmann's wages; or that Triangle breached a promise to Bachmann to raise his wages. Bachmann testified that Holland told him that he would give him his requested raise if Bachmann would work a "five and three." Bachmann did not work a "five and three" and therefore did not get his requested raise.

The ULJ concluded that Bachmann did not have good cause to quit his employment with Triangle. Based on substantial evidence in the record, we conclude that the ULJ did not err.

Fair Hearing

Bachmann argues that his evidentiary hearing was inherently unfair because the ULJ is a DEED employee. A hearing to determine qualification for unemployment benefits is an evidence-gathering inquiry. Minn. Stat. § 268.105, subd. 1(b) (2012). The ULJ must ensure that all relevant facts are developed. *Id.* When a party is not represented by counsel, the ULJ should assist the party with presenting evidence. Minn. R. 3310.2921 (2013). Bachmann does not describe any way in which the ULJ was unfair during the evidentiary hearing, nor does the record reflect any unfairness.

Affirmed.