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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0235**

Medhat Abdelaziz,
Relator,

vs.

Fourcrown, Inc., d/b/a Wendy's,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 26, 2012
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 28549787-3

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Fourcrown, Inc. d/b/a Wendy's, Oakdale, Minnesota (respondent)

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Development)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

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

FACTS

Relator Medhat Abdelaziz worked for respondent Fourcrown, Inc. for 14 years. When his employment ended on September 13, 2011, Abdelaziz was the general manager at the Suburban Avenue Wendy's in St. Paul. When Abdelaziz applied for unemployment benefits, he stated that he was discharged for stealing. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that pursuant to Minn. Stat. § 268.095, subd. 2(a) (2010), Abdelaziz is ineligible for unemployment benefits because he quit his employment and because no statutory exception applies. Abdelaziz challenged that benefit denial.

An evidentiary hearing was held before a ULJ. Testimony was taken primarily from three witnesses: Abdelaziz; Owen Lewis, the district manager and Abdelaziz's direct supervisor; and Tom Schmitz, vice president of operations and Lewis's direct supervisor. The ULJ noted at the outset of the hearing that the focus of the hearing was whether Abdelaziz was fired or quit.

Abdelaziz's version of events was that he was fired. Abdelaziz testified that he and Lewis met on September 13, 2011, to discuss matters related to the store that Abdelaziz managed. Schmitz arrived while Lewis and Abdelaziz were meeting and

asked Abdelaziz if he had stolen supplies from the Maplewood Wendy's, a store outside of Lewis's district but one that Abdelaziz formerly managed. Abdelaziz responded that he took the display items after obtaining permission from that store's shift manager. Abdelaziz stated that he had earlier received permission from the Maplewood store's shift manager to take a kids' meal display, one of the supplies at issue. In response, Schmitz told Abdelaziz that the shift manager was not in charge, that his actions constituted stealing, and concluded, "That's it, you're done." According to Abdelaziz, he subsequently handed over his keys and left the restaurant.

Lewis and Schmitz remembered the sequence of events quite differently. Lewis testified that he went to the location to conduct a store evaluation and to talk with Abdelaziz about improving his job performance. Lewis was concerned that he was spending too much time assisting Abdelaziz. Lewis wanted Abdelaziz to start running the store on his own.

Schmitz testified that he had stopped by the Maplewood store that morning and learned that Abdelaziz had taken a display from the store. Because Schmitz knew that Abdelaziz and Lewis were meeting, he went to the Suburban Avenue Wendy's to address the issue with Abdelaziz. When Schmitz arrived, he asked Abdelaziz whether he took supplies from the Maplewood Wendy's. Schmitz was adamant in his testimony that he never characterized the act as "stealing." Abdelaziz admitted that he took the supplies but stated that he did so with the permission of that store's shift manager. Schmitz testified that he told Abdelaziz that he needed to obtain that store's district manager's permission before taking something. In response, Abdelaziz got upset, pounded his fist

on the table and said that he would “kick [the Maplewood store’s district manager’s] a-s.” Abdelaziz then slammed down his keys, headset, and pen and went into the back office. When he came out, Abdelaziz yelled, “I’m done. I quit. Don’t call me because I won’t answer.” Schmitz warned Medhat that if he walked out the door that he would not be welcomed back, and that he’d be done. Abdelaziz then left.

The ULJ determined that Abdelaziz is ineligible for unemployment benefits because he quit and no statutory quit exception under Minn. Stat. § 268.095 (2010) applies. Abdelaziz requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, this court 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 made upon unlawful procedure or are unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(3), (5) (2010). 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).

Throughout the evidentiary hearing, the parties disputed the characterization of the separation. Abdelaziz steadfastly maintained that he had been fired, while the employer’s

witnesses stated that he quit. “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). An individual who quits employment is ineligible for unemployment benefits, unless a statutory exception applies. *Id.*, subd. 1. “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). Whether an employee is discharged or quits is a question of fact. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). We will not disturb factual findings if there is evidence in the record that reasonably sustains them. *Id.*

The ULJ concluded that Abdelaziz quit. In coming to that conclusion, the ULJ accepted the employer’s witnesses’ version of events and rejected Abdelaziz’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 [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2010). This court affirms a credibility determination if the ULJ’s findings are “supported by substantial evidence and provide the statutorily required reason for her credibility determination.” *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

The ULJ determined that “[t]he employer’s witnesses’ testimony was more credible because it was consistent . . . , was more detailed and specific and provided a more likely chain of events.” The record supports this determination. Both Lewis and

Schmitz testified that: Lewis was meeting with Abdelaziz to discuss running his own store; Schmitz arrived later and asked whether Abdelaziz had taken, rather than stolen, items from the Maplewood store; and, thereafter, Abdelaziz pounded his fist on the table, threatened the Maplewood store's district manager, slammed down his keys, walked to the back of the store, and stated "I'm done, I quit." In light of the credibility determinations, the ULJ's factual findings that Abdelaziz quit is supported by substantial evidence.

After determining that Abdelaziz quit, the ULJ noted that the only potentially applicable exception to ineligibility is if Abdelaziz quit because of a good reason caused by his employer. A good reason caused by the employer is one that (1) is directly related to the employment and for which the employer is responsible; (2) is adverse to the worker; and (3) would compel a reasonable worker to quit and become unemployed rather than remain in the employment. Minn. Stat. § 268.095, subd. 3(a). The statute requires that an employee "complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." *Id.*, subd. 3(c). Whether an employee had good reason to quit is a question of law reviewed de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005).

Here, the ULJ concluded that Abdelaziz did not meet the exception. The ULJ stated that "Abdelaziz may have been frustrated with being questioned about taking the supplies because he felt he was authorized to take them . . . , [but] that [did] not provide a good cause for quitting. An employer has a right to supervise the performance of its

employees.” She also noted that personality conflicts and imperfect working conditions do not constitute good cause for quitting. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that an employee did not quit for good reason caused by the employer when the employer’s conduct was neither harassing nor arbitrary and that the situation was more “properly viewed as one of a personality conflict and a judgment of the employer that relator’s job performance was inadequate.”).

Even if one were to accept Abdelaziz’s testimony that Schmitz accused him of stealing and, further, that the accusation of stealing amounted to a good reason caused by his employer, Abdelaziz failed to give his employer an opportunity to correct it. In Abdelaziz’s version of events, he quit during the very meeting in which the accusation was made. The substantial evidence in the record supports the ULJ’s determination that Abdelaziz quit without a good reason caused by his employer.

Abdelaziz asserted in his request for reconsideration that the ULJ failed to afford him a fair evidentiary hearing because the ULJ did not properly develop the record with regard to his reasons for quitting. A ULJ must conduct an evidentiary hearing as an “evidence gathering inquiry” and “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2010). A hearing generally is considered fair and even-handed if both parties are afforded an opportunity to give statements, cross-examine witnesses, and offer and object to evidence. *See Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007); *Ywswf*, 726 N.W.2d at 529-30.

In a case where a party is not represented by counsel, the ULJ has an obligation to recognize and interpret the party’s claims, *Miller v. Int’l Express Corp.*, 495 N.W.2d 616,

618 (Minn. App. 1993), and should assist the party with the presentation of evidence, Minn. R. 3310.2921 (2011). But a ULJ is not the unrepresented party's advocate. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 32 (Minn. App. 2012). Rather, the ULJ must maintain neutrality to assure fairness to all parties. *Id.*; *see also* Minn. R. 3310.2921 (2011) ("The judge must exercise control over the hearing in a manner that protects the parties' rights to a fair hearing.").

Here, the ULJ explained the process and purpose of the hearing. She gave all parties an opportunity to testify. The ULJ asked follow-up questions of all the witnesses and asked Abdelaziz whether he had questions for Schmitz or Lewis, giving Abdelaziz an opportunity to cross-examine them. In addition, the ULJ asked follow-up questions of Schmitz and Lewis on Abdelaziz's behalf. The ULJ described and marked the exhibits used during the hearing and asked Abdelaziz if he had any objections to them. And the ULJ asked Abdelaziz on several occasions whether he wanted to add anything to his testimony. Contrary to what Abdelaziz claims, the ULJ explored potential reasons for Abdelaziz's basis for leaving and clarified the record multiple times throughout the hearing. As one example, the ULJ had the following exchange with Abdelaziz:

Q: Okay. So, again, just to make it clear, you're not saying that because they were being critical of your job and they were trying to call you in and all these other issues, that you just got fed up and left because you didn't want to take it anymore.

A: I didn't quit, they fired me.

Q: Okay. I just wanted to make it clear because obviously there was a lot of things that you were dissatisfied with at the job.

A: Yeah, that, that, that's true, there was a lot of stuff that I wasn't satisfy, but I never, I'm not going to get up and leave.

I would have put in my two-weeks-notice. . . . He's saying that I quit. No, they did terminate me.

In sum, the ULJ did all that she is statutorily required to do. Nothing in the statutes requires a ULJ to assist an unrepresented party to develop theories of recovery that he does not raise and that are inconsistent with the party's testimony at an evidentiary hearing. Substantial evidence in the record supports the ULJ's determination of ineligibility in this case.

Affirmed.