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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0054**

Douglas J. Snater,
Relator,

vs.

Jackel Craig-Jackel Construction,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 9, 2012
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 28104408-3

Douglas J. Snater, Austin, Virginia, Minnesota (pro se relator)

Jackel Craig-Jackel Construction, Austin, Minnesota (respondent employer)

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

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Douglas Snater worked as an occasional construction laborer with Jackel Construction but quit his employment because he felt that the company's owner, Craig Jackel, was verbally abusive and harassed him for mistakes he made on the job. Snater applied for unemployment benefits, but the department of employment and economic development determined that he was ineligible for benefits because he quit without a good reason caused by Jackel. Snater appealed the determination and an unemployment law judge (ULJ) affirmed the department's decision. Snater now appeals by writ of certiorari, arguing that Jackel's conduct provided him with a good reason to quit. Because the record supports the ULJ's determination that Jackel did not verbally abuse or harass Snater, he did not quit for a good reason caused by Jackel, and we affirm.

FACTS

Douglas Snater was employed as an occasional home construction laborer with Jackel Construction from April 21, 1993, until December 20, 2010. Jackel Construction is a home construction and residential remodeling company owned by Craig Jackel. Although Snater was considered a full-time employee at Jackel Construction, he worked for the company only when his labor union did not have other construction work for him.

In December 2010, Snater was working with Jackel Construction on a home in Albert Lea. On December 20 Jackel confronted Snater about issues with Snater's work on the project. Jackel made a comment about Snater's lack of common sense, and Snater felt that Jackel was verbally harassing him. The conditions at the job site that day made

things worse; employees worked during a snowstorm and Jackel cancelled work and sent the crew home early. Snater quit his employment and did not return to work.

Snater had established an unemployment benefits account with the Minnesota Department of Employment and Economic Development in August 2009, and he drew benefits while he was working sporadically for Jackel Construction. He applied for benefits after he quit working at Jackel Construction in December 2010. But the department determined that Snater was ineligible because he quit work without a good reason caused by his employer. This determination meant that Snater had been overpaid \$9,794 in unemployment benefits.

Snater appealed the department's decision and a ULJ conducted a hearing in which both Jackel and Snater testified. Jackel did not deny that he sometimes used profane language when confronting employees about their mistakes. But he explained that his standards for construction are very high, his company is known for its quality work, and his company has been successful because he holds himself and each employee to the same high standard. He testified that he had to constantly watch Snater to ensure that he followed instructions and completed tasks properly because Snater lacked common sense and frequently made mistakes. The ULJ agreed with the department's ineligibility determination and found that the lack of evidence was insufficient to establish that Jackel's conduct towards Snater was harassing or adverse. Snater requested reconsideration and the ULJ affirmed her decision.

Snater appeals by writ of certiorari.

DECISION

Snater argues that the ULJ erred by determining that he is ineligible for unemployment benefits because he quit without a good reason caused by Jackel Construction. We may remand, reverse, or modify a ULJ's decision if the relator's substantial rights were prejudiced by findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made upon unlawful procedure, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2010).

An applicant who quits his employment is generally ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). But an exception exists if the applicant “quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason for quitting is a reason that (1) directly relates to the employment and for which the employer is responsible; (2) is adverse to the worker; and (3) would compel an average, reasonable, worker to become unemployed. *Id.*, subd. 3(a) (2010).

The decision whether an employee quit with good reason caused by the employer is a legal question, which we review de novo. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). But the factual findings underlying the decision are viewed in the light most favorable to the ULJ's decision and will not be disturbed if reasonably sustained by the evidence in the record. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (citations omitted). We defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Snater argues that Jackel caused him to quit because he would swear at him, call him names, belittle his work, and throw temper tantrums. He claims that Jackel admitted

to acting this way five percent of the time that Snater was employed by him. Snater slightly mischaracterizes Jackel's testimony. Jackel actually testified that Snater had problems at work five percent of the time. He did admit that he would get upset with Snater when he made common-sense mistakes and when his work was not on par with the high level of quality that Jackel expected. The ULJ credited Jackel's testimony and found that it was reasonable for him to hold Snater to these high standards and expect that Snater would do his job correctly.

The ULJ also found that there was insufficient evidence to prove that Jackel's conduct was harassing. He concluded that an average, reasonable construction worker would not quit and become unemployed because his boss yelled at him when he performed below expected high standards of craftsmanship. The ULJ's reasoning is sound. "The correct standard for determining whether relator's concerns were reasonable is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols*, 720 N.W.2d at 597 (quotation omitted).

There is also no evidence that Jackel's conduct was arbitrary. Jackel testified that he became upset at Snater only when Snater completed his work incorrectly or below Jackel's standards. Snater admitted that Jackel yelled at him only when he made mistakes. Snater's only response to the ULJ's request for a recent example of Jackel's alleged harassing behavior was his explanation that Jackel had yelled and sworn at him when he had put a wall up incorrectly. As found by the ULJ and conceded by Snater, profanity and yelling are common at construction sites. It is certainly reasonable for an employee to prefer not to be the subject of harsh speech. But it is not reasonable for a

construction worker to deem yelling and swearing so intolerable that he quits and becomes unemployed; this is especially so here, when the yelling and swearing is the employer's response to the worker's mistakes.

Affirmed.