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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1884**

Richard D. Hiam,
Relator,

vs.

Blackwater Choppers LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 23, 2008
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 9934 07

Richard D. Hiam, 10150 Quince Street Northwest, Coon Rapids, MN 55433 (pro se
relator)

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Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101-1351 (for respondent Department of Employment and Economic
Development); and

Blackwater Choppers, LLC, 235 County Road 81, Osseo, MN 55433 (respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Relator Richard Hiam challenges an unemployment law judge's decision that he quit his employment, that the quit was without good reason caused by his employer, and that he was therefore disqualified from receiving unemployment benefits. Because the record contains substantial support for the unemployment law judge's findings of fact and because the conclusions of law are not erroneous, we affirm.

FACTS

Richard Hiam began working full time as a service technician for Blackwater Choppers on April 18, 2005. Blackwater sells and repairs motorcycles. Hiam's work schedule was ordinarily Tuesday through Saturday beginning at 10:00 a.m. On Wednesday, June 13, 2007, Hiam walked off the job before noon after becoming angry with Larry Kennelly, Blackwater's general manager. After walking off the job, Hiam called Blackwater co-owner Scott Meyer and told him that he had just walked out of the shop and could no longer work with Kennelly. Hiam gave Meyer an ultimatum: fire Hiam or fire Kennelly. Blackwater did not fire Kennelly. A few hours after Hiam walked off the job, Kennelly called and told him that "Blackwater and Hiam were parting ways."

Hiam then sought unemployment benefits from the Department of Employment and Economic Development (DEED). DEED denied Hiam benefits because it determined that he quit his employment without a good reason caused by Blackwater. Hiam appealed and, following a hearing, an unemployment law judge (ULJ) determined

that Hiam quit when he walked off the job and told Blackwater that he would not return unless Blackwater discharged its general manager. The ULJ weighed credibility to decide disputed fact questions, finding that Hiam's testimony was less credible than the testimony of the Blackwater witnesses because Hiam's "was more self-serving, unsubstantiated and uncorroborated." The ULJ also rejected Hiam's assertion that he was subject to intolerable work conditions or harassment, or that an average reasonable employee would have quit. The ULJ therefore concluded that Hiam was disqualified from receiving unemployment benefits. She affirmed her decision after Hiam requested that she reconsider.

Hiam now challenges the ULJ's decision by writ of certiorari.

D E C I S I O N

Hiam argues that he is entitled to unemployment benefits because he did not quit. He contends that Blackwater fired him after he refused to tolerate unwarranted demeaning treatment by managers. Without giving any specific example, he maintains that the transcript of the hearing shows that he made several complaints to the owners of Blackwater in an attempt to end alleged harassment by managers. He concedes that he walked off the job and gave the ultimatum, but he argues that he did so only because of the hostile workplace created by Blackwater's management. We are not persuaded.

I

We first consider whether Hiam voluntarily quit his employment. "Whether an employee voluntarily quit is a question of fact for the [decisionmaker]." *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003).

This court may reverse, remand, or modify the ULJ's decision if the findings of fact or inferences are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (Supp. 2007). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Minnesota Ctr. for Env'tl. Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). We review factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000). Hiam's argument fails under these standards.

A quit occurs when the employee decides to end employment. Minn. Stat. § 268.095, subd. 2(a) (2006). The record evidence supports the conclusion that Hiam decided to end his employment. Hiam walked off the job in the middle of his shift. He gave Meyer the ultimatum, "Either [Meyer] wanted Larry [Kennelly] to work for Blackwater Choppers or [Meyer] wanted [Hiam] to work for Blackwater Choppers." Steve Rozell, Blackwater's service manager, testified that he overheard Hiam tell others that Hiam had quit.

Hiam disputes this significant evidence that he quit. He contends that he did not quit but was discharged because it was Blackwater's failure to correct Kennelly's allegedly abusive treatment that caused Hiam to walk off the job. An employee is discharged "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) (2006). There is some support in the record for Hiam’s argument that he was discharged. First, a few hours after Hiam walked off and gave his ultimatum, Kennelly called and told him that he and Blackwater were “parting ways.” In some circumstances, an employee who is told by his employer that it is time to part ways might reasonably believe that the employer has decided to disallow the employee to work, satisfying the statutory definition of discharge. And Hiam testified that one of the owners of Blackwater told him that he “was fired because [he] had given management an ultimatum and when management is given an ultimatum the person giving the ultimatum will always be fired.” Additionally, Hiam denies telling anyone that he quit.

But we are not convinced by Hiam’s argument that we must hold that he was discharged. We will generally defer to the ULJ’s factual decisions on disputed issues. Whether an employee quit is a question of fact. *Hayes*, 665 N.W.2d at 552. This court “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Because the testimony of the Blackwater witnesses substantially sustains the ULJ’s findings that Hiam quit, we will rely on those findings. Despite Blackwater’s declaration that Hiam and Blackwater were parting ways, the statement came after Hiam walked off the job and after Hiam demanded that either he or his supervisor be fired. The ULJ therefore had a reasonable and factual basis on which to conclude that Hiam had already quit by walking off the job and that his ultimatum was his offer to rescind his decision to quit on the unreasonable condition that Blackwater discharge Kennelly. Considering the ULJ’s

factual findings in the light most favorable to the decision and giving deference to the ULJ's credibility determinations, *Jenkins*, 721 N.W.2d at 289, we have no basis to reject the ULJ's finding that Hiam made the choice to end his employment.

II

We next consider Hiam's argument that even if he quit employment, he is entitled to unemployment benefits because he quit for a good reason caused by Blackwater. "Whether an employee had good cause to quit is a question of law, which we review *de novo*." *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005). Hiam's argument depends on disputed testimony, and again, we defer to the ULJ's credibility determinations and the ULJ's weighing of evidence. *Jenson*, 617 N.W.2d at 631 (relying on credibility determinations); *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995) (refusing to reweigh conflicting evidence).

An applicant who quits employment is disqualified from receiving unemployment benefits unless the circumstances satisfy a statutory exception. Minn. Stat. § 268.095, subd. 1 (2006). One circumstance is when the applicant quits because of a "good reason caused by the employer." *Id.*, subd. 1(1). A good reason caused by the employer is one that is "directly related to the employment and for which the employer is responsible; adverse to the worker; and . . . would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2006). To avoid being disqualified from receiving benefits, an applicant who was subjected to adverse working conditions must complain and give the employer a reasonable opportunity to correct the adverse condition before quitting. *Id.*, subd. 3(c).

The ULJ considered but discounted Hiam's testimony of alleged hostility. Hiam contended that he faced hostile and demeaning treatment at Blackwater. He asserts that he gave his ultimatum only because of the "daily harassment" and "abusive treatment" that he faced from Blackwater management. He testified that Kennelly interrupted him when he was working, called him a "prick" and an "a--hole," and said that "nobody can stand to be in the same room with you." He claimed that, on one occasion, Kennelly stood over him and yelled at him for half an hour. Kennelly denied all of this, and no witness corroborated Hiam's accusations. The ULJ found that "Hiam did not complain to the owners that Kennelly would swear at him or call him demeaning names or verbally harass him."

Relying on the ULJ's supported findings, we conclude that Hiam did not quit for a good reason caused by Blackwater: Hiam was not subject to genuinely intolerable work conditions, an average reasonable employee would not have quit, and Hiam did not complain to Blackwater and give it an opportunity to correct the allegedly adverse conditions. An ongoing conflict between Kennelly and Hiam apparently infected their relationship, and Hiam opined that Blackwater needed no general manager. Irreconcilable differences between Kennelly and Hiam clearly existed, since Hiam stated that he could no longer stand working with Kennelly. But a "good reason for which the employer is responsible" does not include situations when an employee experiences irreconcilable differences with other employees or when the employee is simply frustrated or dissatisfied with his working conditions. *Portz v. Pipestone Skelgas*, 397

N.W.2d 12, 14 (Minn. App. 1986). The ongoing conflict between Hiam and Kennelly does not compel a finding that Hiam quit for a good reason caused by his employer.

The ULJ weighed credibility against Hiam's testimony to find that "[t]here is nothing to substantiate any harassment" and that "Hiam was not subject to intolerable work conditions." Because credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal, *Skarhus*, 721 N.W.2d at 345, we rely on those findings. We therefore affirm the ULJ's determination that Hiam did not quit for good reason caused by Blackwater.

Because Hiam quit employment when he walked off the job with an ultimatum that conditioned his return on the termination of his boss, and because he did not quit for a good reason caused by Blackwater, we affirm the ULJ's decision that Hiam is disqualified from receiving unemployment benefits.

Affirmed.