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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1925

Stephen T. Baker,
Relator,

vs.

American Legion,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 21, 2008
Affirmed
Schellhas, Judge

Department of Employment and Economic Development
Agency File No. 9087 07

Stephen T. Baker, 408 True Street Northwest, New Brighton, MN 55112 (pro se relator)

American Legion, 400 Old Highway 8, New Brighton, MN 55112 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Schellhas, Judge.

U N P U B L I S H E D   O P I N I O N

SCHELLHAS, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that relator was disqualified from receiving unemployment benefits because he quit his job without good reason caused by his employer. Because we determine that relator was not discharged from his employment, but quit for a reason caused by his own employment misconduct, we affirm.

FACTS

Relator Stephen T. Baker worked full-time for respondent Tri-City American Legion ("the Legion") from May 8, 2000 through May 1, 2007. On April 19, 2007, relator was involved in an incident at his workplace. Relator returned to the Legion after his shift, had some drinks, went into the dining area after it had closed, and argued with two Legion waitresses.

The post commander witnessed the confrontation in the dining area and testified that relator argued with the waitresses for not telling him about food shortages during the previous night's fish fry. The bar manager was also present and recalled that, after the confrontation in the dining area, relator continued to argue with staff members in the main bar. The bar manager testified that relator was yelling at staff members about the food shortages and also argued with a customer outside the building that evening. That customer submitted a written incident report in which he claimed that three other customers had complained to him about relator's "loud" and "obnoxious" behavior at the bar. The customer reported that he had tried to talk to relator about his behavior, but

relator got upset and walked away. Later, relator asked the customer to accompany him outside, where he proceeded to yell at the customer.

As a result of relator's conduct that evening, the Legion suspended him through April 30, 2007. After relator's suspension, relator met with both the Legion commander and office manager to talk about relator's conduct. The Legion commander offered relator the opportunity to receive anger and alcohol-dependency counseling. Relator refused to attend counseling, stating that he did not need it. The office manager then told relator that his bartending hours would be eliminated, but that relator could continue to work as a kitchen manager. The office manager testified that, upon hearing that he would no longer be allowed to work as a bartender, relator stood and said, "I quit. You violated my contract," and walked out of the building. Relator argues that he did not quit his job, but only stated that being fired as a bartender was a "violation of our verbal agreement." The office manager testified that, although relator had resigned from his job more than once in the past, the Legion had previously allowed him to rescind his resignation because they needed the help. This time, however, the Legion accepted relator's resignation, and his employment ended.

Respondent Department of Employment and Economic Development (DEED) determined that relator was disqualified from receiving unemployment benefits because he quit his employment "without a good reason caused by the employer." Relator appealed to a ULJ, who reached the same decision. The ULJ found the Legion commander's testimony "more credible than [relator's] version" and found relator's testimony to be "self-serving, not credible" in light of evidence that relator had attempted

to quit on other occasions. The ULJ also found that if relator had good reason to quit, in that his bartending hours were eliminated, the reason stemmed from relator's own misconduct. The ULJ found that relator "had treated various staff persons and customers very inappropriately." After relator submitted a request for reconsideration, the ULJ affirmed that relator was disqualified from receiving unemployment benefits because he quit without good reason caused by his employer. Relator now petitions this court for a writ of certiorari.

D E C I S I O N

This court may remand, reverse, or modify the decision of a ULJ if the substantial rights of the relator may have been prejudiced because the findings, conclusion, or decision are, among other things, unsupported by substantial evidence or are arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(5), (6) (2006). Whether an employee quit or was discharged is a question of fact for the ULJ. *Nichols v. Reliant Eng'g & Mfg., Inc.,* 720 N.W.2d 590, 594 (Minn. App. 2006). An appellate court reviews findings of fact "in the light most favorable" to the ULJ's decision, gives deference to the ULJ's determinations of credibility, and will not disturb the ULJ's findings when the evidence substantially sustains them. *Skarhus v. Davanni's Inc*., 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee quits employment "when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd 2(a) (2006). Relator denies that he announced, "I quit," after being told that he would not be able to work at the Legion as a bartender. He challenges the credibility of the other two

participants in the meeting, who assert that relator made this announcement. "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus*, 721 N.W.2d at 344 (citations omitted). The testimony of multiple witnesses in the transcript substantially supports the ULJ's finding that relator quit, and therefore we uphold this finding.

Relator also argues that he reasonably believed that he was fired when he was informed that he would not be allowed to work at the Legion as a bartender. Section 268.095 provides that "discharge" 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) (2006). As support of his reasonable belief that he was discharged, relator offers the fact that he told his co-workers that he had been fired and that the Legion's management permanently revoked his bartending hours. But relator ignores that the definition of "discharge" requires that the employee reasonably believes he will no longer be allowed to work for the employer "in *any* capacity." *Id.* (emphasis added). The Legion commander testified that he informed relator that he could remain employed with the Legion as a kitchen manager, and the ULJ incorporated this fact in his findings. Given the deference this court gives to the ULJ's credibility determinations and findings of fact, *Skarhus,* 721 N.W.2d at 344, we conclude that relator did not reasonably believe that he

was no longer allowed to work for his employer in any capacity, and therefore was not discharged as defined in section 268.095, subdivision 5(a).

Because we conclude that relator quit his job, we proceed to determine whether he did so for good reason caused by his employer. An applicant who quit for a good reason caused by the employer is eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2006). "Good reason caused by the employer" is defined as "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) (2006). The determination of whether an employee quit for good reason caused by the employer is a legal conclusion, which this court reviews de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003).

But "good reason caused by the employer" does not include a reason that arises from the applicant's own employment misconduct. Minn. Stat. § 268.095, subd. 3(d) (2006). Employment misconduct is defined as "any intentional negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2006). The Legion argues that relator's disruptive behavior towards other employees and customers constitutes a serious violation of the standards of behavior it has a right to expect from its employees.

"Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus,* 721 N.W.2d at 344. "Whether the employee committed a particular act is a question of fact," and a reviewing court defers to the ULJ's determination. *Id.* But whether that act constitutes employment misconduct is a legal question, which this court reviews de novo. *Id.* Relator disputes other witnesses' account and evidence of the events that occurred. The ULJ's findings that relator engaged in misconduct is supported by testimony and other evidence in the record, including an incident report from a customer, and therefore we will not disturb them. *See id.* (stating that a reviewing court defers to the ULJ's credibility determinations and its findings that are substantially sustained by the record). Given these findings, we affirm the ULJ's determination that by angrily confronting workers and customers during business hours, relator seriously violated the standards of behavior the Legion has the right to expect of its employees.

Section 268.095, subdivision 6(a), excludes from the definition of employment misconduct "a single incident that does not have a significant adverse impact on the employer." But even if relator's conduct on the evening in question constituted a single incident, we conclude that it had a significant adverse impact on his employer's ability to maintain a cooperative, respectful workplace environment. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002) (holding that an isolated incident "can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer"); *Skarhus*, 721 N.W.2d at 344 (holding that a single incident of theft, despite the minimal value of the product stolen, constituted a breach of trust and

had a significant adverse impact on the employer). Therefore, we conclude that the "single incident" exception does not apply here, and that because the reason relator quit arose from his own employment misconduct, he is disqualified from receiving unemployment benefits.

Affirmed.