

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-529**

Rashid Osman, et al.,
Relators,

vs.

JFC Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed December 29, 2009
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File Nos. 21380347-2; 21377235-1; 21380664-1; 21377402-1; 21377495-1; 21377496-1;
21380535-1; 21380531-1; 21380537-1; 21377328-1; 21380534-1; 21380347-1;
21378727-1; 21378549-1; 21377405-1; 21377135-1; 21377762-1; 21377765-1;
21377649-1; 21377645-1; 21377409-1; 21414201-1

Jay W. Ramos, Central Minnesota Legal Services, Suite 309, 830 West St. Germain
Street, Box 1598, St. Cloud, MN 56302 (for relators)

Lauren E. Lonergan, Scott G. Knudson, Susan E. Gelinske, Briggs and Morgan, P.A,
2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for respondent JFC,
Inc.)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic
Development, Suite E200, 1st National Bank Building, 332 Minnesota Street, St. Paul,
MN 55101-1351 (for respondent DEED)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

Relators challenge the determination that they are ineligible to receive unemployment benefits because they quit without good reason caused by the employer. Relators argue that they had good reason to quit because their employer changed the terms of their employment by terminating its floating break program. Relators also claim that the denial of unemployment benefits violated their constitutional right to free exercise of religion because they quit their employment to resolve a conflict between their work schedule and their religious beliefs. We affirm.

FACTS

Relators are 22 former employees of Gold'n Plump Poultry, Inc. (GNP). GNP produces and sells a variety of poultry products and is a subsidiary of respondent JFC, Inc. GNP operates a large poultry-processing facility in Cold Spring, Minnesota, that employs approximately 550 workers and operates 24 hours a day. The facility utilizes a system of production lines that continuously processes live poultry into packaged products. The majority of the work is manually performed by employees who process the poultry as it proceeds through several production areas on a mechanical line.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

A significant percentage of the night-shift employees at the facility, including relators, are Somali Muslims whose faith requires them to perform five daily prayers, including an early morning prayer called Fajr.¹ The window of time to perform Fajr is set by the sun's position in the sky, which changes on a daily basis.

GNP has struggled to accommodate Fajr prayer time because its production schedule is strictly regulated by the federal government. Shifts at the facility start at staggered intervals, with each processing area coming "online" as the poultry proceeds down the production line. Because the poultry continuously moves down the production line, an employee's absence from a processing area for prayer observance can significantly disrupt production, leading to poor product quality and revenue loss. GNP cannot increase the rate of production to compensate for time lost because the federal government has placed limitations on the facility's processing speed.

Until 2002, all night-shift employees received one 15-minute break at 2:00 a.m. and a 30-minute lunch break at 4:00 a.m. The window of time to perform Fajr often coincided with the night-shift employees' lunch break, but during certain times of the year, it conflicted with production time. In 2002, GNP implemented a floating break program at the facility, in part to accommodate some of its Muslim employees. The program allowed a limited number of employees who worked off of the production line to take breaks when they desired, rather than during the regularly scheduled break time. Eligible employees were required to apply for the program and identify a desired time for prayer. Most relators who applied attached prayer schedules from

¹ Fajr means "dawn" in Arabic.

www.Islamicfinder.org, a website that identifies the appropriate time for daily Fajr as between dawn and sunrise. A waiting list was created for the limited number of positions for which a floating break was possible. All but two of the relators applied for the program, but many of them waited several months after initial employment before doing so. The vast majority that applied were accepted into the program after a short time on the waiting list. Relators who received a floating break prayed together.

In October 2006, several current and former employees of the facility brought a federal class action lawsuit against GNP on behalf of all Somali Muslim employees, alleging, among other things, that GNP had violated state and federal laws by failing to accommodate their need to pray. On August 27, 2008, after extensive mediated negotiations between the parties, and consultation with local Somali community leaders, a tentative settlement agreement was reached. As part of the settlement, GNP agreed to alter its break schedule for all night-shift employees, replacing the 15-minute break with two 10-minute breaks. The second 10-minute break would be scheduled to occur between dawn and sunrise, the prayer window for Fajr identified by the Islamicfinder website. Shortly thereafter, the federal district court preliminarily approved the settlement.

GNP decided not to wait for final federal district court approval of the settlement before implementing the new break policy because Ramadan, the Muslim holy month, would begin on September 1, 2008. Shortly after the settlement was reached, GNP supervisors met with employees to describe the new break policy, which would begin on September 2.

On September 2, dawn occurred at 5:16 a.m. and sunrise at 6:40 a.m. The break for Fajr was scheduled to begin between 6:20 a.m. and 6:33 a.m., depending on the employee's position on the production line. Rather than wait for the scheduled break, relators left their work stations en mass at 5:30 a.m. to pray. Relators received two-day suspensions and 90 days of probation as a consequence for leaving their work areas without permission. GNP also required them to sign a "Corrective Action Notice," agreeing to abide by the company's break policy before they could return to work. Upon arriving at the facility on September 5, 2008, relators refused to sign the notices and claimed that GNP was terminating their employment. GNP supervisors denied that the employees were being fired. Relators declined to agree to the break policy and were escorted from the facility.

Relators applied for unemployment benefits with the Department of Employment and Economic Development (DEED), and an evidentiary hearing was held before an unemployment law judge (ULJ) to determine their eligibility.

At the hearing, relators argued that they were eligible to receive unemployment benefits because they were discharged for refusing to accept unreasonable changes to their break schedule that conflicted with their religious beliefs. Specifically, relators testified that they refused to adhere to GNP's new break schedule because the timing of the second break did not coincide with the appropriate time for Fajr. According to relators, Fajr must be performed between dawn and 45 minutes after dawn. Relators claimed that they left their work areas to pray on September 2, 2008, because the prayer

schedules they received from their local mosque, the Islamic Center of St. Cloud (ICSC), indicated that Fajr was to be performed at 5:30 a.m. that day.

Relators also offered the opinions of Mohamed Nuh, the imam of ICSC, and Hassan Mohamud, an imam and professor of Islamic law at William Mitchell College of Law. Nuh testified that, based on his interpretation of the Koran and the teachings of the Prophet Mohammed, Fajr must be performed within “30 to 45 minutes” after dawn, and that those who fail to perform the prayer within this time period will be punished. Nuh also claimed that he advised members of his congregation, many of whom were GNP workers, to adopt this practice. However, Nuh was unable to identify any Islamic scripture or teaching that specifically indicates that Fajr must be performed within 45 minutes of dawn, and he later admitted that the 45-minute window was only “an estimate” or “reference point” for the generally accepted time. Similarly, Mohamud opined that the “ideal” time for Fajr “is near the beginning of the prayer time period,” which he claimed was at 5:30 a.m. on September 2, 2008. But Mohamud did not mention a 45-minute window, and he also stated that Fajr can be performed at any point “after dawn but before sunrise.”

GNP challenged relators’ eligibility for unemployment benefits, claiming that relators were not discharged from their employment, but quit without good reason. GNP argued that relators did not have good reason to quit because their purported beliefs that Fajr must be performed within 45 minutes of dawn were not sincerely held. GNP noted that many relators waited several weeks or months after being hired to apply for the floating break program, and at least two of them never bothered to apply. GNP also

offered testimony from relators' supervisors and a human resources supervisor who testified that relators accepted into the program did not consistently take their breaks during the 45-minute prayer window. Collectively, these witnesses testified and produced business records indicating that during the last two weeks of August 2008, relators who received floating breaks could not have prayed during the 45-minute window because they took their paid 15-minute floating break and unpaid 30-minute lunch break before dawn. The witnesses further testified that when relators left their areas without permission to pray on September 2, 2008, they were "laughing and having a good time" as they walked down the hallway outside the processing area. Some relators also "smirk[ed]" and "roll[ed] their eyes" during disciplinary meetings. One relator was overheard stating that relators "were all going to walk off the line at 5:35 in the morning and they were going to get paid for it."

GNP also offered testimony from Ahmad Ahmad, an assistant professor of Islamic Studies at the University of California, Santa Barbara. Ahmad testified that some Islamic religious experts recommend that Muslims perform Fajr shortly after dawn, but it is not mandatory to do so.

After the hearing, the ULJ found that relators were ineligible to receive benefits because they quit their employment without good reason. The ULJ specifically found that relators' religious beliefs did not constitute good reason to quit because GNP "provided [relators] with a reasonable accommodation for Fajr prayer" by establishing a second break period that was scheduled to occur between dawn and sunrise. The ULJ also rejected relators' testimony that they believed Fajr could only be performed within

the first 45 minutes after dawn because (1) “[t]here [was] a lack of evidence that [relators] either consistently said Fajr prayer [during that time] or informed GNP of their belief”; (2) relators’ expert witnesses did not state that Fajr must be performed during the exact prayer window identified by relators; and (3) a prayer window between dawn and sunrise was acceptable to all other Muslim GNP employees, many of whom attended the same mosque. Relators made a request for reconsideration, but it was denied. This certiorari appeal followed.

D E C I S I O N

I.

Relators contend that they are entitled to receive unemployment benefits because they had good reason to quit their employment. When reviewing the decision of a ULJ, we may remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008).

Employees who quit employment are ineligible for unemployment benefits except under limited circumstances. *See* Minn. Stat. § 268.095, subd. 1 (2008). An exception applies if the applicant quit “because of a good reason caused by the employer.” *Id.*, 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.” *Id.*, subd. 3(a) (2008). Whether an applicant had a good

reason to quit caused by the employer is a legal question reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Relators contend that they had good reason to quit because GNP breached the terms of their employment by eliminating the floating break program, which they claim was a “valuable” benefit to them. Relators waived this argument by failing to raise it below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally will not consider matters not argued to and considered below). But even if we were to consider relators’ argument they would not be entitled to relief. Unlike the cases they cite in which employees were found to have good reason to quit after an employer breached a promise to an employee regarding pay, work hours, or the type of work to be performed, there is no evidence in the record that relators were promised a floating break or that the floating break program would remain in place throughout their employment. The floating break application forms provided to relators explicitly state that those accepted into the program are “not permanently guaranteed” a floating break. Because relators failed to raise this issue below, and because the evidence does not support the conclusion that relators were promised a floating break, relators are not entitled to relief on this basis.

II.

Relators also claim that the ULJ’s denial of unemployment benefits violated their constitutional right to free exercise of religion because they quit their employment to resolve a conflict between their work schedule and their religious beliefs. The state and federal constitutions protect the right to free exercise of religion. U.S. Const. amend. I;

Minn. Const. art. I, § 16. “The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877, 110 S. Ct. 1595, 1599 (1990).

The United States Supreme Court has held that a state cannot deny unemployment benefits to applicants who were forced to choose between their religious beliefs and employment because such a denial violates the Free Exercise Clause of the First Amendment. *See, e.g., Frazee v. Ill. Dep’t of Employment Sec.*, 489 U.S. 829, 834-35, 109 S. Ct. 1514, 1517-18 (1989) (holding that applicant was not disqualified from receiving unemployment benefits when he refused position that would have required him to work on Sundays, which was contrary to his religious beliefs); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 139-41, 107 S. Ct. 1046, 1048-49 (1987) (holding that state’s refusal to award unemployment benefits to applicant discharged for refusing to work on Sabbath violated Free Exercise Clause).

But in order to qualify for unemployment benefits under a free-exercise theory, an applicant who quits employment must demonstrate that continuing in the employment would have burdened the applicant’s *sincerely held* religious beliefs. *See Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18, 101 S. Ct. 1425, 1432 (1981) (requiring substantial burden to employee’s sincere religious beliefs caused by denial of unemployment benefits); *Hill-Murray Fed’n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992) (providing that a successful free exercise challenge under the state constitution requires a party to establish, among other things,

that state action violated sincerely held religious beliefs). The sincerity of a religious belief is a quintessential fact question that often hinges on credibility and whether the applicant has been consistent in observing or honoring the belief. *See E.E.O.C. v. Unión Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico*, 279 F.3d 49, 56 (1st Cir. 2002) (“Credibility issues such as the sincerity of an employee’s religious belief are quintessential fact questions.”); *Int’l Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2d Cir. 1981) (stating that “an adherent’s belief would not be ‘sincere’ if he acts in a manner inconsistent with that belief”).

Here, the ULJ concluded that relators did not have a sincere belief that Fajr could only be performed within the first 45 minutes after dawn because (1) relators did not consistently perform Fajr within the 45-minute prayer window or inform GNP of their belief before quitting; (2) none of the religious experts unequivocally testified that Fajr must be performed within that time period; (3) other Muslim workers who attended the same mosque as relators and were involved in the class-action settlement performed Fajr during the scheduled break time instead of leaving their work areas with relators to pray on September 2, 2008; and (4) relators were untruthful in testifying that they were unaware of the class-action lawsuit and never discussed leaving their work areas “en masse” on September 2, 2008.

Despite acknowledging that “[s]ome of the testimony elicited by GNP may be clear enough” to support the ULJ’s finding, relators challenge the determination that their beliefs are not sincerely held. Relators rely on their own testimony and the testimony of their religious experts. They also contend that those who testified on behalf of GNP

lacked credibility and gave inconsistent answers to questions involving the timing of lunch and floating breaks. We agree that there was some conflicting testimony concerning the sincerity of relators' beliefs. But this court defers to the ULJ's resolution of conflicting testimony and assessment of credibility. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Because the finding that relators were not sincere in their beliefs was essentially a credibility determination, and because there is substantial evidence in the record to support the finding, the ULJ did not err in denying relators unemployment benefits.

Affirmed.