STATE OF MINNESOTA
IN COURT OF APPEALS
A09-604

Alfonzio Harlin,
Relator,

vs.

Emergency Food Shelf Network Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 9, 2010
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 21360189-3

Alfonzio R. Harlin, Burnsville, Minnesota (pro se relator)

Emergency Food Shelf Network, Inc., New Hope, Minnesota (respondent employer)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Worke, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

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

WORKE, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that (1) he was justified in quitting his employment and (2) the ULJ conducted an unfair hearing. We affirm.

D E C I S I O N

Determination of Ineligibility

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. Minn. Stat. § 268.105, subd. 7(d) (2008). A relator's substantial rights are considered prejudiced when the findings, inferences, conclusion or decision of the ULJ are:

> (1) in violation of constitutional provisions;
> (2) in excess of the statutory authority or jurisdiction of the department;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
> (6) arbitrary or capricious.

Id. This court "view[s] 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 v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Relator Alfonzio Harlin started his employment as a transportation and program coordinator with respondent-employer Emergency Food Shelf Network Inc. (EFSN) on September 2, 2008. He gave notice of his intent to quit on September 22 after discovering that he could not afford to pay his health-care premiums of $740 per month, and his final day of work was October 3. Relator was deemed to be eligible for unemployment benefits on November 19. EFSN appealed the initial determination, and a ULJ determined that relator was ineligible for unemployment benefits because he quit his employment without good reason caused by EFSN.

Absent a statutorily provided exception, a person who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2008). An exception exists when an employee quits because of a good reason caused by the employer. *Id.*, subd. 1(1). A good reason caused by the employer is a reason that is directly related to the employment and for which the employer is responsible, that is adverse to the employee, and that would compel an average, reasonable employee to quit and become unemployed rather than remain in the employment. *Id.*, subd. 3(a) (2008). The reasonable-employee standard is objective and is applied to the average person rather than the supersensitive, and there "must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). Additionally, an employee must "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." Minn. Stat. § 268.095, subd. 3(c) (2008); *see also Burtman v. Dealers Disc.*

Supply, 347 N.W.2d 292, 294 (Minn. App. 1984) (holding that an employee's failure to complain to the employer about the adverse working conditions "forecloses" a finding of good reason caused by the employer), *review denied* (Minn. July 26, 1984). "The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg. Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Relator contends that he was informed that the health-insurance premiums for his entire family would be approximately $285 and that he accepted the position based on this assurance. He testified he was informed that his monthly health-care premiums would likely be higher than $285 per month roughly one week into his employment. Relator claimed that it was not until his second full week of employment that he was told that his monthly health-care premiums would be $740. Relator testified that his salary was too high for his family to receive state-provided health care, and too low for him to afford paying $740 per month in health-care premiums. For these reasons, relator claimed that he could not afford to work at EFSN and tendered his resignation.

Relator does not appear to challenge the ULJ's determination that he quit his employment or that the employment was suitable. Instead, relator challenges the ULJ's determination that EFSN did not misrepresent the cost of his insurance prior to his employment and that he therefore failed to demonstrate a good reason for quitting his employment caused by EFSN. The ULJ found that the accounts of events surrounding relator's insurance provided by the employer's representatives were "more credible than

[relator's] testimony, because [they presented] a more plausible chain of events and they corroborate each other. The evidence does not support that EFSN misrepresented the insurance costs to [relator] or that [relator] relied on [a misrepresentation] when accepting the job." The ULJ further concluded that "[t]he evidence does not show that EFSN treated [relator] adversely or that an average, reasonable employee would [have] quit."

The ULJ made credibility determinations and favored the testimony from the employer that relator was informed on the day after his second interview that his projected health care premiums would be near $700 per month. Also, relator's contention that the premiums for his entire family would be $285—the same premiums paid by one employee for only herself and her husband—is contradicted by the summary of benefits relator admitted to receiving, and is wholly unsupported by the record. The record supports the ULJ's finding that relator knew the approximate price of his health-care premiums prior to accepting the position and thus did not demonstrate a good reason for quitting caused by EFSN.

Fair Hearing

Relator also argues that the ULJ failed to conduct a fair hearing. A ULJ conducts a hearing "as an evidence gathering inquiry and not an adversarial proceeding." Minn. Stat. § 268.105, subd. 1(b) (2008). The ULJ "must ensure that all relevant facts are clearly and fully developed." *Id.* The ULJ has a duty to "exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007). A hearing generally is considered fair if both parties are afforded an opportunity to give statements, cross-examine witnesses, and offer and object to

evidence. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

Both relator and his wife testified at the hearing, and relator also intended to call a former EFSN coworker as a witness. Although relator did not know the coworker's last name, he assured the ULJ that the coworker knew that he was going to testify and was awaiting the phone call. A review of the transcript illustrates that the coworker was not expecting the call and was unfamiliar with the hearing process, and the coworker ultimately declined to participate in the hearing because he was at work. Relator now contends that he was denied a fair hearing because the ULJ failed to call this witness back later in the hearing.

Relator's argument fails for two reasons. First, it is difficult to ascertain how relator's right to offer evidence was impaired by the ULJ not calling back a witness who clearly had no idea that he was supposed to testify, was only vaguely familiar with the subject matter of the hearing, and ultimately declined to testify. Second, and more importantly, relator did not make this objection or request that the witness be called back during the hearing or in his request for reconsideration. Relator is therefore precluded from presenting this argument for the first time on appeal. *Cf. Big Lake Ass'n v. Saint Louis County Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (stating that an argument is waived in an administrative appeal when not raised in administrative proceeding with "sufficient specificity to provide fair notice of the nature of the challenge"); *Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 66-67 (Minn. App. 2008) (holding that arguments raised for the first time in a motion to a ULJ for reconsideration

may be considered by this court), *review granted* (Minn. June 18, 2008) *and order granting review vacated* (Minn. July 6, 2009).

Affirmed.