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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1399**

Scott Thomson,
Relator,

vs.

Avalon Express, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 3, 2017
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 34709761-3

Scott Thomson, Maiden Rock, Wisconsin (pro se relator)

Avalon Express, Inc., Cannon Falls, Minnesota (respondent employer)

Lee B. Nelson, Keri Phillips, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the unemployment-law judge's decision finding him ineligible for unemployment benefits because he quit without a good reason caused by his employer. We affirm.

FACTS

Relator Scott Thomson worked as a truck driver for respondent Avalon Express Inc. from July 2010 until May 2016. In March 2016, while performing a delivery, Thomson was involved in a traffic accident. Avalon's insurance carrier wanted Avalon to discharge Thomson, but David Olson, Avalon's owner, worked with the insurance carrier to create a training program for Thomson that allowed him to keep his job. At one training session, Thomson reported to Olson that a dispatcher had "pushed" him to drive about 1,000 miles a day in a 64-mile-per-hour truck. Olson instructed Thomson "to tell dispatch that you can't do that for safety concerns if you feel that they're pushing you too much." When Thomson responded that this would "piss the guys off at dispatch," Olson said, "I know but you have to do what you have to do."

Federal drive-time regulations prohibit certain commercial drivers from: (1) starting a work period without first taking 10 consecutive hours off duty; (2) driving after a 14-consecutive-hour work period without first taking 10 consecutive hours off duty; and (3) driving more than 11 hours in a 14-hour work period. 49 C.F.R. § 395.3(a) (2016). Avalon's dispatchers schedule pick-ups and drop-offs, but they do not know when drivers

begin and end their days. Avalon instead relies on drivers to manage their own time and comply with the federal drive-time regulations.

On May 26, 2016, Thomson was scheduled to make a morning delivery in Belgium, Wisconsin, to be followed by another delivery in Burnsville, Minnesota, the next morning. Thomson completed the deliveries, but in doing so he drove more than 11 consecutive hours in a 14-hour period in violation of federal law. After finishing, Thomson called Bruce, a dispatcher, who asked Thomson to make a delivery to Brainerd that evening. Thomson told Bruce that he would not do so because it was unsafe. Bruce found another driver to make the delivery and asked Thomson to load up Thomson's trailer and allow the other driver to switch trailers with him. Thomson agreed, and the other driver switched Thomson's loaded trailer with an empty one while Thomson took a nap at a Savage customer's lot.

After Thomson woke up from his nap, he drove the empty trailer to Avalon's place of business. When Thomson arrived, Bruce was upset because he had wanted Thomson to leave the empty trailer at the Savage customer's lot. Bruce told Thomson that he was being "written up" for moving a trailer without authorization. Later that day, Thomson e-mailed Olson to inform him that he had been "dispatched for 722 miles, totaling 16 hours" and that he "[didn't] want to run this crazy." The next day, Thomson texted Olson, stating, "I need to know if I did something wrong in your eyes. You already warned me that I would piss dispatch off if I stuck to my guns on safety, and I did. What do you think?" After receiving no reply, Thomson sent Olson another text message expressing his safety concerns. On May 29, Olson responded by telling Thomson that he "s[cr]ewed up by

coming down [empty]” and added, “This is not a safety issue.” Thomson then told Olson that he quit.

Thomson applied for unemployment benefits with the Minnesota Department of Employment and Economic Development. The department issued a determination of ineligibility, and Thomson appealed. Following a hearing, an unemployment-law judge (ULJ) concluded that Thomson was ineligible for unemployment benefits because he quit without a good reason caused by Avalon. The ULJ affirmed his decision on reconsideration. Thomson now appeals to this court by writ of certiorari.

D E C I S I O N

An employee who quits employment is generally ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2016). An exception exists when the employee quits because of a good reason caused by the employer. *Id.*, subd. 1(1). This exception provides eligibility when the quit occurred because of 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) (2016). An employee generally “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.” *Id.*, subd. 3(c) (2016). But this court has recognized that a complaint need not be made when “an employer violates federal trucking laws related to the public safety.” *Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn. App. 1992).

“We review de novo a ULJ’s determination that an applicant is ineligible for unemployment benefits.” *Fay v. Dep’t of Emp’t & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (quotation omitted). “This court also gives deference to the credibility determinations made by the ULJ” and “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010) (quotation omitted). The reason why an employee quit is a question of fact. *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986). But “[t]he issue of whether an employee had good reason to quit is a question of law reviewed de novo.” *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

The ULJ concluded that Thomson did not have a good reason for quitting that was caused by Avalon because he turned down a delivery without adverse consequences, which indicated that “there was no safety issue,” and because there was “no evidence Thomson was forced to do anything he said he could or would not do.” On appeal, Thomson maintains that he quit because of safety concerns and that the record evidence does not support the ULJ’s contrary finding.

Although Thomson is correct that the number of hours he worked on May 26–27 constituted a violation of federal drive-time regulations, Thomson failed to follow Olson’s instructions and tell the dispatcher that he could not make the Burnsville delivery because of safety concerns. Furthermore, Thomson was never threatened with dismissal or disciplined for refusing to make a delivery. When Thomson did tell a dispatcher that he could not make the Brainerd delivery on May 27 because of safety concerns, the dispatcher

accommodated him. The record therefore indicates that the May 26–27 drive-time violation is attributable to Thomson’s reluctance to say no to dispatch, not Avalon’s insistence that he break the law. *See* Minn. Stat. § 268.095, subd. 3(a)(1) (providing that a good reason for quitting must be “directly related to the employment *and for which the employer is responsible*” (emphasis added)); *cf. Parnell*, 484 N.W.2d at 443–45 (holding that truck driver had good reason to quit attributable to employer when employer required him to drive more hours than allowed by federal law and submit inaccurate driver logs and employer admitted to violating federal regulations).

Because substantial evidence supports the ULJ’s finding that Thomson did not quit because of safety concerns, and because Thomson did not have a good reason to quit caused by Avalon, the ULJ did not err by concluding Thomson is ineligible for unemployment benefits.

Affirmed.