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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2022**

Oliver McCrary,
Relator,

vs.

United Parcel Service, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 3, 2017
Affirmed
Toussaint, Judge***

Department of Employment and Economic Development
File No. 35017295-3

Oliver McCrary, Minneapolis, Minnesota (pro se relator)

Sarah B. Riskin, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent United Parcel Service, Inc.)

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

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Toussaint,
Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator Oliver McCrary challenges the determination by an unemployment-law judge (ULJ) that he quit his employment and is ineligible to receive unemployment benefits. Relator argues that he quit due to ongoing racial harassment at work. Because the evidence in the record substantially supports the ULJ's findings and decision, we affirm.

DECISION

When reviewing a ULJ's unemployment-benefits decision, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the applicant may have been prejudiced because the decision was affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2016). “[W]e will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). This court reviews de novo the determination that an exception to ineligibility was not satisfied. *See Rowan*, 812 N.W.2d at 883 (quotation omitted). But the reason an employee quit is a question of fact. *See Posey v. Securitas Security Servs. USA, Inc.*, 879 N.W.2d 662, 664 (Minn. App. 2016) (noting reason for employee’s separation from employment is fact question).

There is no dispute that relator quit his employment with respondent United Parcel Service, Inc. (UPS). An applicant who quits his or her employment is generally ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2016). At the hearing, relator asserted that he satisfied two of the exceptions to ineligibility: (1) quitting for a good reason caused by his employer under Minn. Stat. § 268.095, subd. 1(1), and (2) quitting because of a medical necessity under Minn. Stat. § 268.095, subd. 1(7). We address each exception in turn.

An applicant may be eligible for unemployment benefits if he quit “because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason caused by the employer 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.” Minn. Stat. § 268.095, subd. 3(a) (2016). The third element requires that the employee was compelled to quit by “extraneous and necessitous circumstances” and sets an objective standard of reasonableness. *Werner v. Med. Prof’ls LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Aug. 10, 2010). “The test for whether there was good cause attributable to the employer for the termination is whether the reason for quitting is compelling, real and not imaginary, substantial and not trifling, reasonable and not whimsical and capricious.” *Shanahan v. Dist. Mem’l Hosp.*, 495 N.W.2d 894, 896 (Minn. App. 1993). Additionally, if the reason for quitting is adverse working conditions, an applicant must notify the employer of the adverse working

condition and give the employer time to correct it in order to have a good reason to quit. Minn. Stat. § 268.095, subd. 3(c) (2016).

Relator argues that he quit because of racial harassment from other UPS employees. Relator's allegations of racial harassment are wide-ranging and date back to 2008. Relator contends that, among other things, the employees displayed plastic nooses near his workstation, tampered with his car while he was at work and at home, and placed a paint spill and a business card near his workstation with the intention of racially harassing him.

The ULJ found that relator's allegations were unsubstantiated and that he did not complain or notify UPS about a majority of them. The ULJ's findings are supported by substantial evidence. Furthermore, all of the conduct and evidence that relator relied on as evidence of racial harassment does not satisfy the "objectively reasonable" test. We, therefore, conclude that the alleged conduct relied upon by relator does not constitute a good reason to quit attributable to UPS.

An applicant who quit his or her employment is not disqualified from receiving unemployment benefits if "the applicant quit the employment . . . because the applicant's serious illness or injury made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7). "This exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*

There is no evidence that relator's quit was medically necessary, let alone that relator notified UPS of his condition, requested an accommodation, or was denied such an accommodation. Thus, relator does not qualify for the medical-necessity exception. *See*

id.; cf. *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38-39 (Minn. App. 2002) (concluding that medical-necessity exception applied when applicant notified employer of her medical condition and requested transfer to position that would not aggravate it, but no reasonable accommodation was made available). Accordingly, the evidence substantially sustains the ULJ's finding that relator voluntarily quit his employment and did not satisfy an exception to ineligibility for unemployment benefits.

Affirmed.