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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0296**

Robert Welch,
Relator,

vs.

Twin Express, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed December 3, 2018
Affirmed
Reyes, Judge**

Department of Employment and Economic Development
File No. 35915660-4

Robert Welch, Miles City, Montana (pro se relator)

Twin Express, Inc., Wendy Cole c/o Pro Resources Corporation, Detroit Lakes, Minnesota
(respondent employer)

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

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that he
does not qualify for unemployment benefits. Because relator quit his employment and does

not meet any statutory exception to ineligibility under Minn. Stat. § 268.095, subd. 1 (2016), we affirm.

FACTS

Twin Express Incorporated employed relator Robert Welch as an over-the-road truck driver from September 2015 to September 2017. In September 2016, relator went on a leave of absence because he did not believe he was getting enough time at home. Relator returned to Twin Express in February 2017. Relator went on a second leave of absence in March 2017, again, because he wanted to be home more. Relator returned at the end of April 2017. Still unhappy with how much time he had at home, relator took another month-long leave of absence starting on June 26, 2017. Over his two years of employment at Twin Express, relator consistently took leaves of absences from work so that he could return to Montana, do work on his house, and spend time at home.

On August 21, 2017, relator went to the company office and explained to management at Twin Express that he wanted to be able to go home in between runs within the next few weeks. Twin Express gave relator a new truck and instructed him to take a load to Iowa. After driving to Iowa, Twin Express sent relator to California and he was unable to stop at home in between runs. Relator returned to the office on September 4, 2017, and quit his employment permanently with Twin Express.

Relator filed an application for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED), which determined that relator was ineligible for unemployment benefits. Relator appealed to a ULJ. The ULJ

conducted an evidentiary hearing pursuant to Minn. Stat. § 268.105, subd. 1 (2016), where relator and Twin Express presented testimony and other evidence.

The ULJ determined that relator did not satisfy any exception to his ineligibility for unemployment benefits, including quitting for a good reason attributable to the employer. Relator filed a request for reconsideration, and the ULJ affirmed the initial determination. Relator then filed this writ of certiorari.

D E C I S I O N

I. Standard of Review

In reviewing a ULJ's eligibility determination, this court may affirm or remand for further proceedings, or reverse or modify if the petitioner's substantial rights might have been prejudiced because the findings, inferences, conclusion, or decision was: "(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." Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (Supp. 2017).

"In unemployment benefit cases, the appellate court is to review the ULJ's factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We defer to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). The ULJ's ineligibility determination and the determination that an employee quit without good reason attributable

to the employer, are legal conclusions which this court reviews de novo. *Thao v. Command Ctr., Inc.*, 824 N.W.2d 1, 4 (Minn. App. 2012).

II. The ULJ did not err in determining that relator is ineligible for unemployment benefits because he did not quit for a good reason caused by his employer.

Relator argues that the ULJ erred in determining that he did not qualify for unemployment benefits because Twin Express prevented him from going home in accordance with the company policy, which constitutes a “good reason” to quit employment. We are not persuaded.

Under the Minnesota unemployment insurance program, a person who becomes unemployed through no fault of their own may register for unemployment benefits in order to obtain a temporary and partial wage replacement. Minn. Stat. § 268.03, subd. 1 (2016). Generally, a person who quits their employment is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1. However, one exception is if the employee quit “because of a good reason caused by the employer.” *Id.*, subd. 1(1). The statute defines a good reason caused by the employer 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).

The ULJ made two key factual findings here: (1) that Twin Express does not have a set home-time policy and that Twin Express did not guarantee to relator that he would be able to return home for any specific period of time when he was hired and (2) that when

relator requested to be home, Twin Express made reasonable efforts to get him home. We address each issue in turn.

A. Twin Express does not have a set home-time policy and did not guarantee to relator that he would be able to return home for any specific period of time when he was hired.

Relator testified that when he was first hired at Twin Express, they told him that he would be able to go home one day for every week that he was out driving, consistent with the industry standard, and he believed that to be Twin Express's policy. Relator testified that he was constantly asking to go home, but that management at Twin Express never gave him the proper amount of home time.

Operations manager Richard Edwards testified that Twin Express does not have a set home-time policy and that they have drivers who choose to be out for varying lengths of time. Edwards explained that "we have some drivers that are out for a week. We have some drivers that are out for two months." Edwards further testified that the company does go by the general industry standard of allowing drivers one day off at home for every week they are out on the road. But the ULJ credited the evidence that the industry standard is "not a specific policy of Twin Express." Edwards also qualified his statement by noting that consistent home time is not absolutely guaranteed, and drivers need to notify the company of requested home time in advance "so that we can get a heads up enough to get them home."

Taking this testimony in the light most favorable to the ULJ's decision, as we must, Edwards stated that "we don't have a set home time policy" which supports the ULJ's finding on that issue. And Edwards's testimony supports the ULJ's inference and finding

that “[w]hen [relator] was hired for this job he was not guaranteed that he would be able to return home for any specific period of time.”

B. Twin Express made reasonable efforts to get relator home time when he requested it.

Safety worker Diane Ayres testified that relator had a different working relationship with Twin Express than normal; “when he would come back, it was always with the understanding that he did some fixing or bought appliances in his house and he ran short of money because he was retired. So he would come back and work a few months, save up some money, and then go home and take time off again.”

The record reflects that Twin Express made reasonable efforts to accommodate this unusual working relationship. Dispatcher Chuck Kemp testified that relator did request home time, but that “he would also constantly change what he was doing.” Kemp testified that relator was able to get his home time when he properly requested it and that if relator didn’t get one day off for every week he was out driving, it was because he wanted to stay out longer to make more money. Kemp stated that there were no times relator was denied home time when he properly requested it. This was corroborated by Edwards, who testified that relator never complained to him personally about being denied home time.

The ULJ found the testimony of Kemp to be more credible than that of relator, specifically finding that, “[t]he more credible evidence shows that when [relator] requested to be home, Twin Express Incorporated would make reasonable efforts to get him home.” This court has made clear that “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangston v. Allina Med. Grp.*, 766 N.W.2d

328, 332 (Minn. App. 2009) (quoting *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006)). Given that relator agreed that he took a month-long leave of absence almost every other month towards the end of his employment and that Twin Express allowed him time at home in May and August 2017, the record supports the findings of the ULJ.

Because the record supports the ULJ's findings that Twin Express did not have a set home-time policy, never guaranteed to relator that he would be able go home for specific periods of time when he was hired, and made reasonable efforts to get relator time at home, the ULJ did not err in concluding that relator did not satisfy the good-reason exception and therefore is ineligible for unemployment benefits.

Affirmed.