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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2071**

James R. Waclawik,
Relator,

vs.

Viking Coca-Cola Bottling Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 30, 2019
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 36661734-3

James R. Waclawik, Moorhead, Minnesota (pro se relator)

Anthony Domenic Todero, Baird Holm LLP, Omaha, Nebraska (for respondent Viking
Coca-Cola Bottling Company)

Katherine Conlin, Anne B. Froelich, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Smith,

John, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

Relator James Waclawik appeals from the determination of an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because no statutory exception applies entitling relator to benefits notwithstanding his having quit his employment. Relator argues that he was compelled to quit by a medical condition or, alternatively, by a good reason caused by his employer. We affirm.

FACTS

Relator was employed with Viking Coca-Cola Bottling Company as an account manager from 1989 until July 13, 2018, when relator quit his employment.¹ Relator applied for unemployment benefits, claiming that a medical condition required that he quit after he informed Viking of the condition and no accommodation was made. The Minnesota Department of Employment and Economic Development determined that relator was eligible for benefits. Viking appealed the determination, and an evidentiary hearing was held before a ULJ. Relator testified. Lisa Zolin, Viking's director of human resources, and Mark Jeffers, Viking's on-premise director, also testified.

Relator testified that he quit because Mr. Jeffers told relator in June of 2018 that he would need to move out of his first-floor office to an office they were going to make upstairs. Relator testified that Viking wanted to have all of the sales managers on the first floor and "apparently I was considered non-management." He testified that everybody was

¹ Relator informed Viking that he quit on July 2, 2018, but was employed with Viking through July 13, 2018 by way of vacation time.

well aware that he suffered from a medical condition since 2005 when he was diagnosed with silicosis, a lung disease. Relator added that his lung disease had a lot to do with him not wanting to move to an office upstairs because the office building had no elevator.

Relator testified that, after being asked to move offices, he did not explain to Mr. Jeffers that his medical condition would make it difficult for him to office upstairs. Rather, relator explained that he did not think he should have to move because he felt he was part of management and had been with Viking a long time. Relator stated that Ms. Zolin came to the office a month later and told him he had to move out of his office because they wanted all management to be on the same floor. Relator testified that he did not tell Ms. Zolin about his lung condition at that time because he “was just so upset about the other facts of everything else.” Relator’s wife later sent Ms. Zolin a letter explaining relator’s lung condition. Ms. Zolin told relator that she wanted to speak to him directly about the concerns his wife had raised.

Relator testified that he had a phone conversation with Ms. Zolin and Mr. Jeffers a few days later and, while he was not sure what was said, he remembered being “very, very upset and very hurt.” When the ULJ asked relator if he explained that his medical condition made it hard for him to work on the third floor, relator replied that “I never brought that up at that time.” When asked why he never made it clear that he could not work out of a third-floor office because of his medical condition, relator replied, “Um, I guess I don’t know.” Relator testified that he did not provide any reason for quitting, but “just put in my notice.”

Ms. Zolin testified that she and another manager at the office met with relator for over an hour on June 20. Relator acknowledged that he never discussed his medical

condition at that meeting and felt it was unfair that he had to change offices. Relator also acknowledged that management may not have been aware of his medical condition because they commenced employment with Viking after relator had notified the company of his medical condition in 2005.

On May 31, 2017, relator provided a letter from his doctor that mentions relator's silicosis. Relator testified that he provided this letter to Viking as a refresher to understand his condition. The letter notes that relator "gets short of breath with bending" and recommends that relator should only be required to bend over on rare occasions. The letter does not mention any difficulties relator may have concerning stairs. Relator testified that he reviewed his employee file with Ms. Zolin on the last day he worked at Viking. Relator's file contained no further documentation concerning his medical condition and relator testified that he did not inform Ms. Zolin that any documents were missing. On July 20, 2018—after relator had quit—he provided Viking with a medical record from May 2016; that record indicates that relator has difficulty using stairs because it makes him short of breath.

Ms. Zolin testified that she did not become aware that relator's lung condition was part of the reason why he did not want to move offices until relator's wife left a voicemail with Viking on June 26. Ms. Zolin claimed that, in all prior conversations with relator, he said only that he felt he had been treated unfairly, and that he deserved to remain in his office because of his long tenure with Viking. Ms. Zolin testified that on June 28, when relator said he was contemplating quitting, she informed him that Viking could find another

location on the first floor of the building if the issue is really with climbing stairs. Relator denied at the hearing that he was ever informed that he could stay on the first floor.

Mr. Jeffers testified that he has been aware of relator's medical condition since 2005, but that he did not know that walking up and down stairs would be problematic. Mr. Jeffers testified that Ms. Zolin informed relator on June 28 that they would make accommodations if an upstairs office would not work, but that relator was very upset and "stated that he's probably just gonna to have to quit."

The ULJ found that relator quit his employment because he was angry that Viking planned to move his office to the third floor. The ULJ found that, at the time relator quit, Viking had offered to permit him to remain officed on the first floor.² The ULJ also found that the testimony of Viking's witnesses and its written submissions were more credible than relator's evidence. The ULJ explained that the testimony of Viking's witnesses was more logical overall, and therefore more credible. The ULJ noted that both parties agree that Viking made employment accommodations in the past concerning relator's medical condition. Given that history, the ULJ explained that it does not make sense that Viking would refuse to provide a workspace on the first floor once it understood that relator's

² In the section of ULJ's order providing the "Reasons for Decision," the ULJ wrote that Viking "offered to allow [relator] to have his office on the second floor." The record does not support this statement. But given that the remainder of the order consistently states that Viking offered to allow relator to maintain his office on the first floor, including in the "Findings of Fact," we are convinced the erroneous statement was a typographical error. Relator's argument is that he should have remained on the first floor, not that there was a difference between moving his office to the second floor and moving it to the third floor.

medical condition made it difficult for him to walk up the stairs. The ULJ determined that relator is ineligible for unemployment benefits because he quit.

Relator requested reconsideration. The ULJ determined that relator's request for reconsideration repeated arguments made during the evidentiary hearing and primarily argued that the ULJ erred by finding Viking's witnesses' testimony and written submissions more credible than relator's. Additionally, the ULJ determined that relator's arguments failed to show that the evidence submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision. The ULJ explained that it had "fully considered [relator's] request and determined that the decision of September 27, 2018, is factually and legally correct."³

This appeal followed.

D E C I S I O N

We may only "reverse or modify the [ULJ's] decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision" violate constitutional provisions, exceed the department's statutory authority, were made after an unlawful procedure, are based on an error of law, are unsupported by

³ Notwithstanding this statement, the ULJ's order denying the request for reconsideration also provides that its initial order and findings are "*not* correct and are modified as follows." (Emphasis added.) But the order then made no significant correction to or modification of the initial order. The order denying the request for reconsideration is identical to the initial order except for changing one word: "determination" was modified to "decision." The discrepancy is likely the result of using an incorrect template. In any event, relator does not provide any argument concerning this inconsistency in the order on reconsideration. The ULJ certainly should have been more careful in drafting the reconsideration order, but there is no doubt that the ULJ was affirming the earlier order.

the record evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2018). We review factual findings “in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 461 (Minn. 2016) (quotations 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). “The determination that an applicant is ineligible for unemployment benefits based on the facts of the case is reviewed de novo.” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 664 (Minn. App. 2016).

“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2018). Relator concedes that he quit his employment. An applicant who has quit his employment is ineligible for unemployment benefits unless one of ten exceptions applies. Minn. Stat. § 268.095, subd. 1 (2018). Relator argues that there are two exceptions applicable here—one is that he quit for good reasons caused by the employer and the other is that it was medically necessary for him to quit.

An applicant who quits employment because of a good reason caused by the employer may be eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(1). A good reason caused by the employer for quitting is defined as a reason: “(1) 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

(2018). The good reason exception requires that an applicant “complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be a good reason caused by the employer for quitting.” *Id.*, subd. 3(c).

Relator asserts that “any reasonable person would choose to quit rather than deal with inability to do stairs and jeopardize my limited lung capacity.” Relator maintains that, contrary to the ULJ’s findings and other witness testimony, Viking did not provide any accommodations after being informed of his limitations. But the ULJ, having heard the testimony, resolved these discrepancies by making explicit credibility determinations. *Wilson*, 888 N.W.2d at 460. And we defer to those credibility determinations. *Skarhus*, 721 N.W.2d at 344. The ULJ found as a fact that Viking offered to correct the condition about which relator complained before he quit, and the record supports this finding. Relator does not meet the exception for quitting for a good reason caused by the employer.

An applicant who quits employment “because the applicant’s serious illness or injury made it medically necessary that the applicant quit” may be entitled to unemployment benefits. 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.*

Relator argues that the ULJ disregarded evidence of his serious medical condition. To the contrary, the ULJ found as a fact that relator’s “medical condition causes him to experience difficulty breathing when he engages in any type of physical activity.” The ULJ also noted that relator’s “lungs only work at a 50 percent capacity,” and that “Viking

was aware of [his] general medical condition and had offered [him] several accommodations in the past.” The record supports these factual findings.

Relator also argues that he presented evidence that he informed his employer of his medical condition, requested accommodation for his condition, and no reasonable accommodations were made available. Relator explains that he had no choice but to leave his job because it posed a risk to his health and safety, and that he no longer was able to perform an essential part of his job because he did not have access to office space that was reasonably accessible to him. Relator’s own testimony demonstrates that he did not inform Viking until June 28—at the earliest—that his medical condition was the reason he was unable to work on the third floor. Before then, Viking was aware of relator’s medical condition but only generally and only to the extent that a 2017 letter from relator’s doctor revealed concerns with bending too much. After Viking became aware of relator’s medical limitations with stairs, the credible witness testimony as found by the ULJ demonstrates that Viking was willing to accommodate relator’s request. We do not disturb the ULJ’s record-supported determinations. The thrust of relator’s testimony supports the ULJ’s reasoning that relator quit because of his frustration that he was not included in the reorganization of management on the first floor of the building, and not because Viking was unwilling to accommodate his health problems.

Relator does not meet any of the statutory criteria that would entitle him to unemployment benefits notwithstanding his having quit. The ULJ’s decision is supported by the record.

Affirmed.