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Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0812

Daniel Larson,
Relator,

vs.

Heymann Construction Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 3, 2020
Affirmed
Florey, Judge

Department of Employment and Economic Development
File No. 37121279-3

Daniel Larson, Bricelyn, Minnesota (pro se relator)

Heymann Construction Company, New Ulm, Minnesota (respondent employer)

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

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Kirk, Judge.[*]

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

UNPUBLISHED OPINION

FLOREY, Judge

In this certiorari appeal, relator Daniel Larson challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer and because he did not quit unsuitable employment within 30 calendar days. We affirm.

FACTS

Larson began work for Heymann Construction (Heymann) as a full-time laborer on January 21, 2019. Based on secondhand information, Larson believed that he would be paid $26.68 per hour, but under the terms of its collective-bargaining agreements, Heymann was actually paying $22.79 per hour. Heymann never represented otherwise to Larson. On January 24, when Larson found out that the wage was less than he believed, he quit employment and applied for unemployment benefits. Larson was determined to be ineligible for benefits, a determination that he appealed to a ULJ. After an evidentiary hearing, the ULJ determined that Larson was ineligible for benefits because he did not quit for a good reason caused by the employer and because he did not quit unsuitable employment. Larson requested reconsideration, and the ULJ issued an order of affirmance. This appeal follows.

DECISION

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 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, 460 (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). Larson 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). Larson argues that there are two exceptions applicable here—one is that he quit for a good reason caused by his employer and the other is that the employment was unsuitable.

An applicant who quit 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) 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 (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." *Id.*, subd. 3(c).

Larson contends that he quit for a good reason caused by his employer because he believed he would be paid $26.68 per hour, but the job actually paid $22.79. While it is true that a substantial pay reduction is generally considered good cause to quit, here Heymann did not actually reduce Larson's pay. *E.g., Scott v. Photo Ctr., Inc.*, 235 N.W.2d 616, 617 (1975). Heymann's pay structure is governed by its collective-bargaining agreements. Larson testified during the evidentiary hearing that he learned about the $26.68 pay from his brother and from a business agent with his union. Larson's misunderstanding is not a condition for which Heymann is responsible. While the discrepancy in the assumed and actual pay rate may be adverse to Larson, and while it may be true that other people quit employment due to the wage paid, Heymann never represented that it would pay Larson $26.68 per hour, nor did it mislead or misrepresent the actual wage it was offering. Accordingly, we affirm the ULJ's determination that Larson did not quit for a good reason caused by Heymann.

Another exception applies if an employee quit "within 30 calendar days of beginning the employment and the employment was unsuitable." Minn. Stat. § 268.095, subd. 1(3). Larson contends that the employment with Heymann was unsuitable because of the low rate of pay and the 60-mile commute.

Minn. Stat. § 268.035, subd. 23(a) (2018), states that suitable employment "means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." The same section instructs that when determining "whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence is considered." *Id.*

Primary consideration "is given to the temporary or permanent nature of the applicant's separation from employment and whether the applicant has favorable prospects of finding employment in the applicant's usual or customary occupation at the applicant's past wage level within a reasonable period of time." *Id.*, subd. 23a(b). When prospects are "unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment considering the applicant's education, training, work experience, and current physical and mental ability." *Id.* When an applicant is seasonally unemployed, like Larson, "suitable employment includes temporary work in a lower skilled occupation that pays average gross weekly wages equal to or more than 150 percent of the applicant's weekly unemployment benefit amount." *Id.*, subd. 23a(d).

Here, Larson was seasonally laid off for more than ten weeks before beginning the job with Heymann. Larson was receiving unemployment benefits in the amount of $462 per week. The ULJ reasoned that accordingly, even lower-skilled employment paying at least $693 was suitable for Larson. The job with Heymann paid $911.60 per week, and Larson "had the knowledge and experience to complete the job requirements." The ULJ

also noted that Larson "regularly commuted to job sites" and that the "60-mile distance is a distance less than Larson's ordinary site-to-residence distance." The ULJ also noted that because Larson was seasonally laid off and had been unemployed for more than ten weeks, "the rate of pay, distance of the site from his residence, and the nature of the work do not make the [employment] unsuitable for Larson" and thus, the statutory exception does not apply. This is supported by the record, including Larson's testimony at the evidentiary hearing. We affirm the ULJ's determination that Larson did not quit unsuitable employment. Because the ULJ correctly determined that neither of cited statutory exceptions apply, we affirm the ULJ's decision that Larson is ineligible for benefits.

Affirmed.