STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0956

Jerrod Feist,
Relator,

vs.

City of Plymouth,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 25, 2022
Affirmed
Gaïtas, Judge

Department of Employment and Economic Development
File No. 45063675-3

Jerrod Feist, Rogers, Minnesota (self-represented relator)

City of Plymouth, Plymouth, Minnesota (respondent-employer)

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

Considered and decided by Frisch, Presiding Judge; Gaïtas, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Jerrod Feist challenges the decision of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer. We affirm.

FACTS

Feist worked as a utilities maintenance worker for the City of Plymouth (the city) from March 2015 until January 21, 2021. Because the position includes snow plowing and operating other commercial equipment, utilities maintenance workers must have a valid Minnesota driver's license with a good driving record, and they must obtain a valid Class B commercial driver's license (CDL) within six months of hire and a valid Class A CDL within one year of hire. The job description for a utilities maintenance worker identifies driving as "an essential function."

On January 11, 2021, Feist was arrested on suspicion of driving while intoxicated (DWI). As a result of the arrest, Feist's driver's license was immediately revoked and his CDL was withdrawn.[1] He informed the city of his driving status a day or two later but maintained that he had not been driving. While the city attempted to ascertain whether Feist's CDL had been affected and whether reinstatement was possible, Feist was allowed to work intermittently on projects that did not involve driving and to take paid leave. On January 21, 2021, Feist resigned from his position.

[1] The CDL disqualification was for a period of 364 days, from January 21, 2021 until January 20, 2022.

Following Feist's resignation, he applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility. Feist appealed the determination and had an evidentiary hearing before a ULJ.

At the hearing, Feist admitted that the January 2021 DWI arrest was not his first. Soon after he began working for the city in 2015, he was convicted of DWI and lost his CDL. At that time, the city extended the probationary period associated with his new job and provided him other work that did not require a CDL for one year. Given these arrangements, Feist was able to continue in his position as a utilities maintenance worker.

When Feist was arrested for DWI again in January 2021, another city employee was involved. According to the police report, Feist and the coworker left a bar together in the coworker's car. While the coworker drove, Feist "sucker punched" him. The coworker pulled over and got out of the car. Feist then allegedly climbed into the driver's seat and shut the door. The friend "knew Feist was extremely intoxicated," so he pulled Feist from the car and they fought on the street. Police responded, and Feist was arrested. He had an alcohol concentration of 0.23.

A day or two later, Feist informed the city that he had been charged with DWI and that his CDL had been revoked, but he did not mention the fracas with the coworker. He assured the city's human resources (HR) director that he had not been driving and that the situation would be "sorted out" in a few days.

The city allowed Feist to perform some work and to take leave while the city reviewed the situation. The HR director spoke with Feist near the end of the workday on

January 20 and informed him that the city was still attempting to confirm the status of Feist's CDL. Shortly after the conversation, the city confirmed that Feist's CDL was withdrawn for one year.

The HR director spoke with Feist again on January 21. She explained that he could no longer perform his job functions that required a CDL and that the city likely would not authorize any driving. The HR director did not tell Feist that he was terminated. According to the HR director, she told Feist to use his paid time off while the situation was in flux. But Feist testified that he believed he was going to be placed on administrative leave.

That same day, Feist's attorney contacted the city attorney to inquire about how Feist could keep his position. The city attorney said that a CDL was required. But the city attorney did not state that Feist was terminated. At that point, the city still had not decided whether to terminate him. Feist's attorney told the city attorney that he had filed a petition to challenge the revocation of Feist's driving privileges.

After speaking with his attorney, Feist believed that the city would terminate him within a matter of days. He therefore chose to resign so that his employment record would not show a termination and based on his belief that he would secure "Cobra insurance . . . for a year." While the city attorney was informing the HR director about the discussion with Feist's attorney, Feist emailed the HR director his resignation.

Based on the evidence introduced at the hearing, the ULJ determined that Feist had quit his position without a good reason caused by the city and affirmed the determination of ineligibility for benefits. Feist submitted a request for reconsideration, and a ULJ affirmed the original determination.

Feist appeals.

DECISION

When reviewing the decision of the ULJ, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are "(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) (2020).

Feist argues that the ULJ erred in concluding that he was ineligible for unemployment benefits because he quit his job without a good reason caused by his employer. We view "the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

As an initial matter, Feist contends that he did not quit his position, but instead was discharged by his employer. Under Minnesota law, "[a] discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." Minn. Stat. § 268.095, subd. 5(a) (2020). Conversely, an employee voluntarily quits when he exercises his free will to leave or stop working. *Id.*, subd. 2(a) (2020). "Whether an employee has been discharged or voluntarily quit is a question of fact

subject to our deference." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012).

The ULJ found that Feist was not discharged because the city did not lead him to believe that he could no longer work in any capacity. Instead, the ULJ found, Feist "quit because he believed he was going to be discharged and he did not want a termination on his record." The evidence substantially sustains these findings. Feist acknowledged that no supervisor or superior had informed him that he was being discharged. Instead, based on the HR director's remarks, he inferred that he would ultimately be discharged. According to the HR director, the city had not made a decision about Feist's position when he resigned. She testified that the city was in a "holding pattern" waiting for more information about the situation. During that time, Feist worked three full days and an additional hour. And the HR director also instructed him to take paid leave, which is evidence that there was no discharge. *See* Minn. Stat. § 268.085, subd. 13a(d) (2020) ("An applicant who is on a paid leave of absence, whether the leave of absence is voluntary or involuntary, is ineligible for unemployment benefits for the duration of the leave."); *see also id.*, subd. 13(c) (2020) ("A suspension from employment with pay, regardless of duration, is not a separation from employment."). Because the record substantially supports the ULJ's finding that Feist quit his employment, we reject his argument that he was discharged.

Feist next argues that the ULJ erred in concluding that he quit without a good reason caused by his employer. He contends that he was compelled to quit because he felt "there

was an impending termination," there was no paid work available for him until his pending criminal court case was resolved, and he "was fearful to have a termination on [his] record."

Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). An employee who voluntarily quits employment is ineligible for unemployment benefits unless an exception applies. *See* Minn. Stat. § 268.095, subd. 1(1)-(10) (2020). One such exception exists when "the applicant quit the employment 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." *Id.*, subd. 3(a) (2020). "To compel" is "[t]o cause or bring about by force, threats, or overwhelming pressure." *Werner v. Med. Pros. LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quoting *Black's Law Dictionary* 321 (9th ed. 2009)).

This standard is an objective, reasonable-person standard, considering the conduct of an ordinary prudent person. *Id.* The standard applies to the "average" person, "and not the supersensitive." *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 597 (Minn. App. 2006). The circumstances causing an employee to quit with good cause must be "real and not imaginary, substantial and not trifling, reasonable and not whimsical or capricious"; the reason for the quit must be "compelling and necessitous." *Ferguson v. Dep't of Emp. Servs.*, 247 N.W.2d 895, 900 (Minn. 1976) (quotation omitted). The statutory analysis

"must be applied to the specific facts of each case." Minn. Stat. § 268.095, subd. 3(b) (2020).

The reason why an individual quit employment is a fact question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as a question of fact). Here, the ULJ found that Feist "quit because he believed he would be discharged due to the loss of his CDL." We defer to this factual finding as we are required to do.

Feist's reason for quitting is not one "for which the employer is responsible." Minn. Stat. § 268.095, subd. 3(a)(1). The city did not cause the loss of his driving privileges and the ensuing uncertainty about when and whether he would be able to perform his job duties. Moreover, anticipation of a future discharge from employment is not a good reason caused by the employer for quitting. *See id.*, subd. 3(e) (2020) ("Notification of discharge in the future . . . is not a good reason caused by the employer for quitting."); *see also Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-58 (Minn. App. 1983) (concluding that a relator's quit was not the result of a good reason caused by the employer where the relator was late to work multiple times and feared discharge as a result). We therefore conclude that Feist's decision to quit was not based on a good reason caused by his employer.

Affirmed.