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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-882**

Jason Bahr,
Relator,

vs.

Sterling Life Insurance Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 3, 2011
Affirmed in part and remanded
Schellhas, Judge**

Department of Employment and Economic Development
Agency File No. 24143172-3

Jason Bahr, Brainerd, Minnesota (pro se relator)

Sterling Life Insurance Company, Bellingham, Washington (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Shumaker, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for benefits because he quit his job without a good reason caused by the employer. Respondent Department of Employment and Economic Development (DEED) seeks remand on three additional issues. We affirm the ULJ's decision that relator quit without good reason caused by the employer, but remand for consideration of relator's eligibility in light of whether his employment was full- or part-time. We do not remand for consideration of the other two issues noted by DEED because they arise out of different employment and require DEED to make a determination in the first instance.

FACTS

Relator Jason Bahr received unemployment benefits after being "let . . . go" from his job selling disability insurance for Combined Insurance. He then worked for respondent Sterling Life Insurance Company as a field sales manager from July 23, 2009, until he quit on November 27, 2009. DEED determined relator to be eligible for unemployment benefits following his separation from Sterling, and Sterling appealed. A ULJ held an evidentiary hearing and took testimony from relator and his supervisor at Sterling.

Relator testified that he quit because, when he was hired, he was told he would be able to sell a variety of insurance products but was only permitted to sell Medicare supplements and Medicare Advantage Plans with which he had no experience and which are more difficult to sell. Relator also testified that Sterling told him that he would

receive four weeks of training in the field but he was only taken on a single appointment. He testified that his supervisor told him that he would be eligible to sell additional products with which he had experience “very shortly,” but the regional manager told him that his supervisor had not been honest with him and that the new products could be “several months down the road.” In the meantime, because relator’s pay consisted only of commissions, he made very little money and continued to collect unemployment from his Combined Insurance job. But Sterling’s regional manager told him that he was not permitted to work for Sterling if he continued to collect unemployment, saying, “[A]bsolutely not. You’re done if you’re going to continue to do that.” Relator testified that he therefore had “absolutely no choice but to leave.”

Relator’s supervisor testified that relator’s job was expected to be full-time, with 10–15 hours per week spent calling potential customers to set up appointments and 30 hours per week spent going on those appointments. But there was no set schedule, and the supervisor testified that relator worked less than 32 hours per week, spending only “a couple hours here, a couple hours there” making calls. The supervisor testified that an average salesperson could make \$35–50,000 per year working 40–50 hours per week selling only the Medicare products, but that relator deliberately limited his sales to keep his income low so that he would remain eligible for unemployment benefits. According to the supervisor, relator wanted to “delay his start” with Sterling in order to continue to collect unemployment until the new products, with which relator had more experience, were available.

Following the hearing, the ULJ issued findings of fact and a decision that relator was ineligible for benefits because he quit his employment at Sterling without a good reason caused by the employer. The ULJ found that relator could have made \$35–50,000 per year if he put in the necessary time, but that he “limited the hours he was willing to work because he did not want to be ineligible for unemployment benefits.” Relator requested reconsideration, the ULJ affirmed her decision, and this appeal follows.

D E C I S I O N

On appeal, relator argues that he is eligible for benefits because he quit based on being “continually put in situations that [he] could not overcome.” DEED takes no position on appellant’s argument that he had a good reason to quit, but requests that the case be remanded for an additional hearing to develop three ancillary issues: whether relator remains eligible for benefits because his employment with Sterling was only part-time; whether relator “knowingly gave false information to [DEED]” because he failed to disclose his employment at Sterling while receiving unemployment benefits based on his prior employment; and whether relator was “available and actively seeking work” during his time at Sterling.

I. Good Reason to Quit Caused by Employer

Relator argues that he should be eligible for benefits because he had a good reason to quit caused by the employer. This court may reverse or modify a ULJ’s decision if the relator’s substantial rights were prejudiced because the ULJ’s findings, inferences, conclusion, or decision were, among other grounds, affected by an error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)

(2008). We give deference to the ULJ's credibility determinations, view the ULJ's findings in the light most favorable to the decision, and will not disturb those findings if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review legal questions de novo. *Id.*

An applicant who quit employment is generally ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception provides that an applicant may be eligible if he or she "quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1).

A good reason caused by the employer for quitting 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) (2008). "To compel is to cause or bring about by force, threats, or overwhelming pressure." *Werner v. Med. Prof'ls LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Aug. 10, 2010). "[T]here must be some compulsion produced by extraneous and necessitous circumstances." *Id.* (quoting *Ferguson v. Dep't of Emp't Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976)) (quotation marks omitted).

Relator's primary reason that he claims to have quit is that he was not making enough money to survive, but the ULJ found, based on record evidence, that relator was voluntarily working fewer hours than were available in order to remain eligible for

unemployment benefits. Relator's failure to earn more money is therefore not a reason "for which the employer is responsible." Relator argues that his supervisor lied when he said that an average salesperson could make \$35–50,000 per year, but relator provided no contrary evidence at the hearing.

Relator next claims he quit because he was not able to sell the products with which he was experienced. But the ULJ found, based on record evidence, that "[d]ue to events which happened prior to [relator's] working for Sterling, the [products' supplier] would not allow [relator] to sell their products." Based on the ULJ's findings, Sterling was not able to give relator more products to sell. Therefore, relator's inability to sell products with which he had experience is not a reason "for which the employer is responsible."

Third, relator claims he quit because he did not receive the support he was promised in the form of training and leads. The ULJ found, based on record evidence, that relator received lists of phone numbers of potential customers and that he received some training, but not the full four weeks promised. But receiving less training than promised does not rise to the level of a good reason to quit caused by the employer because it would not *compel* an average, reasonable worker to quit. "To compel is to cause or bring about by force, threats, or overwhelming pressure." *Werner*, 782 N.W.2d at 843 (quotation omitted). Nothing in the record suggests that relator was forced to quit, threatened, or subjected to the kind of "overwhelming pressure" that would cause a reasonable person to become unemployed rather than remain in the job. The lack of training and support was therefore an insufficient basis to allow relator to remain eligible for unemployment benefits after quitting.

Finally, relator argues that he was forced to work from home, where his children distracted him, because Sterling closed its office in his area soon after he was hired. Relator did not raise this complaint during the initial hearing, and as the ULJ stated in her decision on reconsideration, relator “testified that working from home was good and there was nothing wrong with working from home.” The record contains no evidence that supports relator’s claim that he quit because he had to work from home.

The ULJ correctly determined that none of relator’s reasons for quitting constitute good reasons caused by the employer.

II. Full- vs. Part-Time Employment

DEED asks this court to remand for an additional evidentiary hearing to determine whether relator was working full- or part-time for Sterling, which could affect his eligibility for benefits following his separation from Sterling even though he quit.

As stated above, an applicant who quits is generally ineligible for benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1. One exception applies if

the employment was part time and the applicant also had full-time employment in the base period, from which full-time employment the applicant separated because of reasons for which the applicant was held not to be ineligible, and the wage credits from the full-time employment are sufficient to meet the minimum requirements to establish a benefit account.

Id., subd. 1(5).

“A hearing to determine qualification for unemployment benefits is an evidence-gathering inquiry.” *Vasseei v. Schmitt & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010) (citing Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009)). “The ULJ

has the duty to ensure that all relevant facts are clearly and fully developed.” *Id.* (citing Minn. Stat. § 268.105, subd. 1(b)). “The judge should assist unrepresented parties in the presentation of evidence.” *Id.* (quoting Minn. R. 3310.2921 (2009)) (quotation marks omitted).

Here, the record contained some evidence that relator’s employment at Sterling was part-time and that he had full-time employment within the base period upon which he had been eligible for benefits. The ULJ had an obligation to fully develop these facts, and if she found that the Sterling employment was part-time, to determine whether relator was eligible for benefits notwithstanding his quit. DEED is therefore correct that this issue should be remanded to the ULJ.

III. Knowingly Giving False Information

DEED also asks this court to remand for an additional evidentiary hearing to determine whether relator knowingly gave false information to DEED.

Any applicant who knowingly makes a false statement or representation, who knowingly fails to disclose a material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, in order to obtain or in an attempt to obtain unemployment benefits may be assessed . . . an administrative penalty of being ineligible for unemployment benefits for 13 to 104 weeks.

Minn. Stat. § 268.182, subd. 2 (2008). Whether an applicant knowingly made false statements under this subdivision is a question of fact. *See Cash v. Comm’r of Econ. Sec.*, 352 N.W.2d 535, 537 (Minn. App. 1984) (stating that this court may not substitute its judgment for the Commissioner’s under predecessor statute).

DEED asserts that, while relator was working for Sterling, he continued to collect unemployment benefits based on his prior employment without reporting his Sterling employment to DEED. The record contains evidence that relator continued to collect unemployment benefits during this period, but contains no evidence as to whether or not relator reported his Sterling employment to DEED.

Unlike the two issues above, which related to relator's eligibility for benefits following his separation from Sterling, this issue relates to relator's receipt of benefits during his tenure at Sterling based on his prior employment. This issue was not one of those before the ULJ during the hearing predicated by this appeal. Before the ULJ can review this issue, DEED must make a determination about it. *See* Minn. Stat. § 268.182, subd. 2 (stating that, in order for an applicant to be disqualified for providing false information to DEED, "[a] determination of ineligibility setting out the weeks the applicant is ineligible must be sent to the applicant by mail or electronic transmission"). DEED is free to make a determination, which can be reviewed by a ULJ. But because this is not an issue relating to the determination on appeal here and because DEED must make a determination in the first instance, we do not remand this issue to the ULJ in this case.

IV. Available and Actively Seeking Work

DEED also asks that this case be remanded for an additional evidentiary hearing on the issue of whether or not relator was available for and actively seeking work while he was working for Sterling. To be eligible for unemployment benefits, an applicant must be "available for suitable employment" and be "actively seeking suitable

employment.” Minn. Stat. § 268.085, subd. 1(4), (5) (Supp. 2009). Neither the ULJ nor the parties addressed or presented any evidence on this issue at the hearing, and the ULJ made no findings related to it.

Like Issue III above, this issue relates to relator’s continuing eligibility for benefits before his separation from Sterling, while the determination reviewed by the ULJ and appealed to this court related to his eligibility following his separation from Sterling. As with Issue III, DEED may issue a determination on this issue, which can then be reviewed by a ULJ in due course; it is not appropriate on remand of this case.

Affirmed in part and remanded.