

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-950**

Ryan Kinniry,
Relator,

vs.

County of Waseca,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 15, 2011
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 23270471-3

Brandon V. Lawhead, Lawhead Law Offices, Austin, Minnesota (for relator)

County of Waseca, Waseca, Minnesota (respondent employer)

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

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Ryan Kinniry appeals from an unemployment law judge's decision holding him ineligible to receive unemployment benefits because he quit his job as a jailer without a good reason caused by his employer, Waseca County. Kinniry argues that the county failed to address the harassment he was experiencing from his supervisor, who is also his brother, and that this gave him a good reason to quit. He alternatively asserts that domestic abuse led him to quit. Because we hold that Kinniry did not quit for a good reason caused by the county, and because the record does not establish that he ever experienced domestic abuse or even raised the issue, we affirm.

FACTS

Ryan Kinniry was a jailer for Waseca County for 19 years, and his brother, Tim Kinniry, was his direct supervisor. Kinniry's wife got a telephone call from a local bar owner informing her that someone had written disparaging remarks about her and Kinniry in the bar's restrooms. The bar owner remarked that Kinniry's brother and sister-in-law had recently patronized the bar and suggested that they were responsible. Kinniry went to the bar to see the graffiti. The owner reported the incident to the Waseca County Chief Deputy, who relayed the circumstances to Timothy Dann, the Waseca County Sheriff and supervisor of Kinniry and his brother.

Sheriff Dann spoke to the brothers separately. He asked Kinniry if he could work with his brother. Kinniry responded that they were professionals and that he did not anticipate problems at work. But Kinniry began to develop irritable bowel syndrome,

requiring frequent and lengthy trips to the restroom during work. Kinniry attributes his bowel problems to the stress of the bathroom-slur incident. A doctor recommended that Kinniry spend two months away from work. Kinniry began using his paid sick leave on June 16, 2009, and on July 28, he gave his official notice of resignation effective August 15. Kinniry continued to expend sick leave until his final day of employment.

Kinniry applied for unemployment benefits, but the Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible because it was not medically necessary that he quit. Kinniry appealed, and an unemployment law judge (ULJ) concluded that Kinniry's reason for quitting was not directly related to his employment and that he had failed to request any accommodation for his medical condition. Kinniry requested reconsideration and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

Kinniry asks this court to reverse the ULJ's determination that he is ineligible for unemployment benefits. We may remand, reverse, or modify a ULJ's decision if a relator's substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made upon unlawful procedure, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2010). We review findings of fact in the light most favorable to the ULJ's decision and give deference to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Kinniry claims that he is eligible for unemployment benefits because he had good reason to quit caused by his employer. An applicant who quit his employment generally is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). But an exception applies when he quit because of a good reason caused by his employer. *Id.*, subd. 1(1). A good reason to quit caused by the employer is one that is “directly related to the employment and for which the employer is responsible,” is adverse to the employee, and “would compel an average, reasonable worker to quit and become unemployed.” *Id.*, subd. 3(a) (2010). But an adverse working condition will not be considered a good reason caused by the employer for quitting unless the employee first complained to the employer and gave the employer a reasonable opportunity to correct the condition. *Id.*, subd. 3(c) (2010). Whether an employee had a good reason to quit is a question of law that we review de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

The record does not support Kinniry’s claim that his reason for quitting was directly related to his employment. The ULJ found that Kinniry and his brother’s personal dispute occurred entirely outside of work. Kinniry also never reported to his employer any alleged relationship between his bowel conditions and his conflict with his brother. And he never requested any alternative working arrangement. The record supports the finding that Kinniry used two months’ sick leave for health reasons and then chose not to return to work for reasons not directly related to his job.

We understand that Kinniry may have assumed that because his employer was aware of the vandalism incident, it might have taken the initiative to separate the two at

work. But Kinniry reported no problems and requested no help. And Sheriff Dann specifically told Kinniry that he should inform him of any work-related problem with his brother and promised that he would “do whatever [he] could to correct it.” Once an employer tells an employee to report any future problem, the employee bears the burden to apprise his employer if a problem develops. *Larson v. Dep’t of Econ. Sec.*, 281 N.W.2d 667, 669 (Minn. 1979). Kinniry did not meet that burden. Because Kinniry failed to establish that his reason for quitting was directly related to his employment or that he complained fruitlessly to the county, he had no good reason to quit caused by the county.

Kinniry also claims that he qualifies for unemployment benefits because his brother’s alleged domestic abuse necessitated his quitting. An applicant who quits his employment may nevertheless be eligible for unemployment compensation if “domestic abuse . . . necessitated the applicant’s quitting.” Minn. Stat. § 268.095 subd. 1(9). But this issue was not presented to the ULJ and so the ULJ made no findings regarding it. And there does not appear to be any evidence of any interaction between Kinniry and his brother that qualifies as domestic abuse as defined in Minnesota Statutes section 518B.01 (2010).

Affirmed.