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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-988**

Kenneth Heiderscheid,
Relator,

vs.

Mora Power, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 22, 2011
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 24318746-3

Kenneth Heiderscheid, Andover, Minnesota (pro se relator)

Mora Power, Inc., Mora, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Stauber, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Kenneth Heiderscheid was employed by Mora Power, Inc., as an over-the-road truck driver until December 2008, when he quit. In March 2010, an unemployment law judge determined that he is ineligible for unemployment benefits because he did not quit his employment for a good reason caused by his employer. We affirm.

FACTS

The unemployment law judge (ULJ) made the following findings of fact:

Kenneth Heiderscheid worked for Mora Power Incorporated from September 2008, through December 18, 2008. He worked full-time as a truck driver. He earned 34 cents per mile. He worked as an over-the-road truck driver. On or about December 14, 2008, Heiderscheid informed Scott Erickson (owner) that he was taking the winter off and he would return to work in the Spring. He decided to take the winter off because he wanted to look for a better job. Erickson told Heiderscheid that he could come back in the Spring if there was work available. Heiderscheid quit because he was unable to adjust to the life style of over-the-road truck driving and he did not have a set schedule as to when he would be home.

In December 2008, Heiderscheid applied for unemployment benefits. The Department of Employment and Economic Development (DEED) determined that he was eligible for unemployment benefits.

In the spring of 2009, Heiderscheid contacted Mora Power and was informed that no work was available. In February 2010, Heiderscheid reapplied for unemployment benefits. DEED determined that he was and is ineligible for benefits because he had quit his job with Mora Power. The determination of ineligibility was upheld on

Heiderscheid's administrative appeal and request for reconsideration. Heiderscheid appeals by way of a writ of certiorari.

DECISION

Heiderscheid argues that the ULJ erred by determining that he is ineligible for unemployment on the ground that he quit his employment with Mora Power. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee is eligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.*

An employee who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (Supp. 2009). But an employee is eligible for benefits despite a quit if the employee quit "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) (2008). These

three requirements “must be applied to the specific facts of each case.” *Id.*, subd. 3(b) (2008).

The ULJ found that Heiderscheid quit his employment in December 2008 despite the fact that work was available. The ULJ found that Heiderscheid quit because he did not enjoy the lifestyle of an over-the-road truck driver. The ULJ stated that “this reason for quitting is not one for which the employer is responsible.” The record supports the ULJ’s findings and analysis. DEED determined that Heiderscheid is ineligible for benefits after he disclosed that he “was unable to adjust to the lifestyle” of an over-the-road truck driver. Heiderscheid testified before the ULJ that he had no previous experience in over-the-road truck driving, disliked the long hours and uncertain schedule, and quit “to look for a job that didn’t include over-the-road truck driving.” Nothing in the record indicates that the terms and conditions of Heiderscheid’s employment with Mora Power were unreasonable or unusual for the position for which he was hired. Thus, the ULJ properly determined that Heiderscheid did not quit for a good reason caused by his employer. *See id.*, subd. 1(1).

Heiderscheid nonetheless contends that he quit for a good reason because Mora Power promised to re-employ him in the spring of 2009. The ULJ heard testimony from both Heiderscheid and Erickson and found that no such guarantee of re-employment existed. The ULJ expressly stated that “Erickson’s testimony is more credible.” “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

Heiderscheid also challenges the requirement that he repay unemployment benefits he received before the determination of ineligibility. He suggests that the December 2008 determination of eligibility should preclude DEED from subsequently determining that he is ineligible for benefits. The relevant statutes, however, are contrary to Heiderscheid's contention. DEED "may issue a determination on an issue of ineligibility at any time within 24 months from the establishment of a benefit account based upon information from any source, even if the issue of ineligibility was not raised by the [employee] or an employer." Minn. Stat. § 268.101, subd. 2(e) (Supp. 2009). If DEED determines that a person is ineligible for unemployment benefits, any benefit amounts previously paid constitute an overpayment. Minn. Stat. § 268.105, subd. 3a(b) (Supp. 2009). An employee who has received an overpayment must "promptly repay the unemployment benefits." Minn. Stat. § 268.18, subd. 1(a) (Supp. 2009).

DEED's determination of ineligibility was made well within 24 months of the December 2008 determination of eligibility. DEED received information from Heiderscheid in early 2010 that caused DEED to conclude that Heiderscheid had quit his employment with Mora Power in December 2008. DEED was required by law to consider the information that Heiderscheid provided. *See* Minn. Stat. § 268.101, subd. 1(a) (Supp. 2009). Thus, DEED did not misapply the law when it determined that Heiderscheid was not entitled to the benefits he had received and that he is required to repay those benefits. *See Hart-Wilkie v. Aetna Life Ins.*, 550 N.W.2d 310, 313 (Minn. App. 1996) (affirming determination of ineligibility notwithstanding prior determination

of eligibility); *Appelhof v. Commissioner of Jobs & Training*, 450 N.W.2d 589, 591-92 (Minn. App. 1990) (same).

Affirmed.