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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-422**

Cedric Williams,
Relator,

vs.

Kelly Services, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed November 28, 2011
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 26587527-3

Cedric Williams, New Hope, Minnesota (pro se relator)

Kelly Services, Inc., Detroit, Michigan (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the determination that he quit his employment for reasons not attributable to his employer and is, therefore, ineligible for unemployment benefits. We affirm.

FACTS

For several months, relator Cedric Williams was employed by Volt Staffing, a temporary staffing service, on an assignment as a packer at Reynolds Packaging Center. In July 2010, Reynolds ended its contract with Volt and contracted with Kelly Services, Inc., also a temporary staffing service. Williams and all other Volt employees were given the option of quitting the assignment or staying as employees of Kelly, but with a shift change. Instead of working from 4:00 p.m. to 2:00 a.m., they would work from 8:00 p.m. to 6:00 a.m. Williams stayed on with Reynolds as a Kelly employee.

Williams lived with his fiancée, her six-year-old child, and their 18-month-old baby. Due to a heart attack in June 2010, Williams's fiancée could not care for the children. Her sister was able to provide child care during Williams's work hours before the shift change. She was no longer able to provide child care after the change. The shift change also complicated Williams's transportation to and from work. Williams attempted to contact Kelly over the course of two weeks to discuss the schedule and to inform Kelly that he would have to quit if the schedule remained unchanged. He did not ask Reynolds for a shift change because he thought that Kelly set his work hours. Williams finally reached a Kelly representative on August 31, 2010, and quit that day.

Williams returned to work at Volt, but that employment ended a few weeks later, and he sought unemployment benefits. The ULJ found that Kelly had not changed Williams's hours during his employment with Kelly and concluded that Williams quit his employment without good reason attributable to Kelly. The ULJ also found that Williams failed to make reasonable efforts to obtain child care and did not seek accommodation from his employer to address the child-care issue and, therefore, did not meet the requirements of a loss-of-child-care exception to the general rule that an employee who quits employment is ineligible for unemployment benefits. The ULJ affirmed the decision on reconsideration, and this certiorari appeal followed.

D E C I S I O N

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand for further proceedings, reverse or modify the decision if the relator's substantial rights were prejudiced because the ULJ's decision violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious. Minn. Stat. § 268.105 subd. 7(d)(1),(3)–(6) (2010). We view the ULJ's factual findings “in the light most favorable to the decision,” and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who quits employment is ineligible for unemployment benefits unless he falls under a statutory exception. Minn. Stat. § 268.095, subd. 1 (2010). Williams asserts that two statutory exceptions apply in this case: (1) a quit for good reasons caused by the employer, *Id.*, subd. 1(1), and (2) the loss of child care caused the

employee to quit, “provided the[employee] made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation is available.” *Id.*, subd. 1(8).

Good reason caused by the employer 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.” *Id.*, subd. 3(a). But if the employee was subjected to an adverse working condition, the employee must complain to the employer and give the employer a reasonable opportunity to correct the adverse working condition before it can be considered a good reason to quit caused by the employer. Minn. Stat. § 268.095, subd. 3(c).

Even if the change in Williams’s schedule could be attributed to Kelly, the record reflects that Williams failed to complain to Kelly about the adversity caused by the shift change or give Kelly an opportunity to address that issue before he voluntarily quit his employment. The record therefore supports the ULJ’s conclusion that Williams failed to qualify for the quit-for-good-cause-attributable-to-employer exception to ineligibility for benefits after a voluntary quit.

To qualify for the loss-of-child-care exception, Williams had to demonstrate that he made reasonable efforts to obtain other child care and requested reasonable accommodation from his employer. The ULJ found that Williams’s efforts to find other child care were not reasonable. On this record, we cannot conclude that the finding is clearly erroneous. But even if we were to conclude that the record requires a finding of

reasonable efforts, it is undisputed that Williams did not ask for time off or any other accommodation for child care before he quit. The facts, therefore, support the ULJ's conclusion that Williams does not qualify for the loss-of-child-care exception.

On appeal, Williams argues that he quit because of transportation issues that arose when his schedule was changed. Williams did not raise this issue during the hearing with the ULJ or when he requested reconsideration. Generally, this court will not consider matters asserted for the first time on appeal. *See Thiele v. Stich*, 425 N.W. 2d 580, 582 (Minn. 1988). And Williams has not asserted that there is an exception to ineligibility when a voluntary quit is caused by transportation problems. *See Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W. 2d 314, 316 (1976) (holding that an employee's quit because of lack of transportation for a particular shift was not good cause to quit attributable to the employer).

The record supports the ULJ's determination that Williams is ineligible for unemployment benefits.

Affirmed.