

*This opinion will be unpublished and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
A11-657**

Gregory R. Nimmo,
Relator,

vs.

K Mart Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 30, 2012
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 26281527-4

Gregory R. Nimmo, Cloquet, Minnesota (pro se relator)

K Mart Corporation, St. Louis, Missouri (respondent employer)

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

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Gregory Nimmo appeals from an unemployment law judge's decision that he is ineligible to receive unemployment benefits because he quit his job as a K Mart loss-prevention manager. Nimmo argues that he had a good reason to quit because his manager subjected him to harassment and psychological abuse. He also contends that he is entitled to an additional evidentiary hearing to present witness testimony not considered by the judge. Because Nimmo quit under circumstances that would not cause a reasonable person to quit and an additional hearing would not change the unemployment law judge's decision, we affirm.

FACTS

Gregory Nimmo worked in loss prevention for K Mart Corporation in Duluth from November 2007 to October 2010. Nimmo's job was to detect, stop, and process shoplifters. He also conducted employee theft and safety evaluations for the store. Nimmo did not get along well with his direct supervisor, Gregory Tambornino, and felt that Tambornino constantly harassed him. Tambornino repeatedly told Nimmo not to wear the same green jacket every day because it compromised Nimmo's objective to remain unrecognized while conducting shoplifting surveillance. He also commented that Nimmo had "finally bought a new shirt" when Nimmo wore a different one. And after Tambornino learned that Nimmo did not join his wife in watching football games he commented, "[Y]eah, you wouldn't want to spend any quality time with your wife." Nimmo characterized Tambornino's comments as hostile, and he reported them to Lori

Bennett, a K Mart human resources employee, and Gene Frost, the store manager. Nimmo spoke frequently with Bennett about his complaints before he quit.

Nimmo also felt that Tambornino was unduly critical of his job performance. On a conference call, Tambornino asked Nimmo a question and then recanted, “Why did I ask you? You wouldn’t know.” Tambornino failed to send an email praising Nimmo the last twelve times that Nimmo caught a shoplifter, breaking from his prior practice. And Tambornino had Jim Templan, a district loss-prevention manager, respond to Nimmo’s question about certifying a new employee rather than respond himself.

Nimmo additionally claimed that Tambornino assigned him more work than others. Tambornino required him to print and review certain loss-prevention documents that Nimmo believed other loss-prevention employees only had to review, but not print. He believed that Tambornino assigned him unnecessary work, such as equipping cordless phones with anti-theft devices even though the phones cost little and had never been stolen.

Based on Tambornino’s critical assessment of Nimmo’s job performance, in February 2009 Nimmo received a notice of corrective action. It outlined 13 areas requiring Nimmo’s “immediate sustained improvement.” He received similar notices in November 2009. Because he did not improve sufficiently, Nimmo was placed on a performance-improvement plan that identified 23 areas that required improvement. In August 2010 Tambornino evaluated Nimmo under the plan and found unacceptable compliance in 16 of those areas. According to Nimmo, after this meeting Tambornino

told him he would accept Nimmo's resignation by email. In September 2010 Tambornino again reviewed Nimmo's performance and found it unsatisfactory in 14 areas.

Nimmo resigned by email on October 10, 2010. He applied to the Minnesota Department of Employment and Economic Development (DEED) for unemployment benefits, and DEED deemed Nimmo eligible for benefits. K Mart appealed this ruling to an unemployment law judge (ULJ). After an evidentiary hearing in which both Nimmo and Tambornino testified, the ULJ determined that Nimmo voluntarily left his employment and did not quit for a good reason caused by K Mart. Nimmo asked the ULJ to reconsider, was denied, and now appeals by writ of certiorari.

D E C I S I O N

Nimmo challenges the ULJ's decision. We may remand, reverse, or modify a ULJ's decision if the relator's substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is infected by an error of law, made on 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).

I

Nimmo argues that he quit because of a good reason caused by K Mart, and therefore the ULJ erred by determining that he is not eligible for unemployment benefits. An applicant who quits employment is generally ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). But an exception to ineligibility applies 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 must be directly related to the employment, the employer must be responsible for it, it must be adverse to the worker, and it “would compel an average, reasonable worker to quit and become unemployed.” *Id.*, subd. 3(a). The ULJ determined that Nimmo’s feelings of being harassed and his complaints about his workload were not good reasons to quit caused by K Mart. We review that determination de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

We think Nimmo overstates his troubles at K Mart by asserting that Tambornino psychologically abused him with constant putdowns and harassment and by requiring him to complete more work than he could reasonably finish. The circumstances that *compel* a decision to leave employment must be real, substantial, and reasonable. *Ferguson v. Dep’t of Employment Servs.*, 311 Minn. 34, 44, 247 N.W.2d 895, 900 n.5 (1976). Despite Nimmo’s characterization, at most the record might support his claim to being reasonably frustrated or dissatisfied with his working conditions, but this falls short of a good reason to quit. *See Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986).

II

Nimmo also argues that the ULJ should have given him the opportunity to reschedule the hearing so he could subpoena witnesses or hold an additional evidentiary hearing where he could offer the testimony of other witnesses. A ULJ must order an additional evidentiary hearing if a party shows that evidence not submitted at the original

hearing would likely change the outcome of the case and he had good cause for not submitting that evidence earlier. Minn. Stat. § 268.105, subd. 2(c). We defer to the ULJ's decision to deny an evidentiary hearing and will reverse only for an abuse of discretion. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

The process was sufficient. The record reflects that the ULJ notified Nimmo that he had the right to request a rescheduling of the hearing so that documents and witnesses could be subpoenaed. Nimmo never responded. Nimmo later testified that he had told Lori Bennett, “[W]e’ll have to do some subpoenas I guess.” And he testified that he spoke to Bennett about his workplace concerns, and he told the ULJ, “[Y]ou’ve got Lori’s name.” The ULJ might have speculated that Nimmo expected a later additional proceeding, but Nimmo never actually requested that Bennett or anyone else be subpoenaed until long after the hearing, once the ULJ issued the decision. The ULJ did not abuse her discretion when she decided that Nimmo did not show good cause for having failed to present his witnesses at the evidentiary hearing or to submit written statements from them.

Affirmed.