STATE OF MINNESOTA
IN COURT OF APPEALS
A11-668

Rafael Peil, et al.,
Respondents,

Nhia Moua,
Respondent,

vs.

Integrated Logistics Holding Company,
Relator,

Department of Employment and Economic Development,
Respondent.

Filed January 23, 2012
Affirmed
Worke, Judge

Department of Employment and Economic Development
File Nos. 26379704-3, 26376874-3, 26380954-3, 26377746-3,
26377243-3, 26379936-3, 26379996-3, 26376259-3, 26380218-3,
26375668-3, 26548329-3, 26548328-3, 26377158-3, 26380515-3, 26376527-3,
26376857-3, 26377024-3, 26380726-3

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Nhia Moua, Maplewood, Minnesota (pro se respondent)

David J. Duddleston, Gina K. Janeiro, Jackson Lewis, LLP, Minneapolis, Minnesota; and

Patrick J. Hoban, Zashin & Rich Co., L.P.A., Cleveland, Ohio (for relator)

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

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

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Relator employer challenges the decision of the unemployment-law judge (ULJ) that respondent employees were eligible for unemployment benefits because they were discharged for reasons other than employment misconduct, arguing that: (1) continued employment provided adequate consideration for requiring respondents to sign a binding-arbitration agreement; (2) respondents quit employment, rather than being discharged, and did so without good reason caused by the employer; (3) respondents had sufficient time to review the agreement before making a decision; (4) the four respondents for whom the employer provided an extended deadline to decide whether to accept the agreement, but who quit before the deadline occurred, did not have good reason to quit caused by the employer. We affirm.

FACTS

Relator Supply Technologies, LLC, formerly known as Integrated Logistics Holding Company, employed the 18 respondents in its Minneapolis warehouse facility. Respondents were full-time, hourly employees. All 18 respondents are minorities and many of them speak Hmong as their first language. During 2009 and 2010, relator's employees organized two union campaigns. In 2010 some of the respondents complained

or filed charges against relator with the Equal Employment Opportunity Commission (EEOC) alleging race and nationality discrimination. Relator was aware of the complaints.

On October 22, 2010, relator provided a memorandum to its employees in its Minneapolis facility announcing that they would be required to agree to a mandatory arbitration program called Total Solution Management (TSM). TSM created a three-step process for employees to resolve disputes, controversies, and claims. The employees were given several documents about TSM in addition to the memorandum, including the official rules of TSM, a questions and answers document, and an agreement for them to sign. Michael Beyer, relator's branch operations manager, testified that TSM was implemented "to support the employees" because there had been two recent union campaigns that "caused a lot of hostility, a lot of commotion, a lot of emotions, a lot of separation of people and the higher ups in [the] company."

Fourteen of the respondents received the TSM documents on Friday, October 22, and were given until Tuesday, October 26, to sign the TSM agreement. Four of the respondents were absent on October 22. Kao Moua and Blong Moua received the TSM documents on Monday, October 25, and were given until Wednesday, October 27, to sign the TSM agreement. Chia Vue and Por Lee received the TSM documents on Tuesday, October 26, and were given until Thursday, October 28, to sign the TSM agreement.

On October 26, Beyer met individually with the 14 respondents who had received the TSM documents on October 22 and explained that they had not submitted a signed TSM agreement, it was past the deadline, and that he had another copy of the agreement

for them if they wanted to sign it. All of the respondents refused to sign the TSM agreement. None of the respondents told Beyer that they quit their employment. Beyer testified that respondents were escorted out of the building after they refused to sign. Kao Moua and Blong Moua had until October 27 to review the TSM documents, but they informed Beyer on October 26 that they were not going to sign the TSM agreement. They were escorted out of the building. Chia Vue and Por Lee had until October 28 to review the TSM documents, but on October 27 they told Beyer they were not going to sign the TSM agreement. They were also escorted out of the building.

Respondents applied and were found to be eligible for unemployment benefits. Relator opposed respondents' claim to unemployment benefits. On January 12, 2011, an in-person hearing was held before the ULJ. The ULJ issued an order on January 14, 2011, and found that all 18 respondents were discharged because "[u]nder the circumstances, an average, reasonable employee would believe he is no longer allowed to work for the employer in any capacity." The ULJ further found that "[b]ecause it was not reasonable for [relator] to expect [respondents] to sign the TSM agreement by the given deadline, their failure to do so is not employment misconduct." The ULJ found that respondents were eligible for unemployment benefits. Relator filed a request for reconsideration and the ULJ affirmed her decision. This certiorari appeal followed.

D E C I S I O N

This court may affirm a ULJ's decision, remand the case for further proceedings, or reverse or modify the ULJ's decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation

of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010).

This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). While this court reviews questions of law de novo, "findings that are supported by substantial evidence will not be disturbed." *Ywswf v. Teleplan Wireless Servs., Inc.* 726 N.W.2d 525, 529 (Minn. App. 2007); Minn. Stat. § 268.105, subd. 7(d)(5). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Relator argues that the ULJ erred when she determined that respondents were discharged. Instead, relator contends that respondents quit because they chose not to be bound by the terms of the TSM agreement and they understood that agreeing to TSM was a condition of continued employment. Whether an employee was discharged or quit is a question of fact, which this court will not disturb if it is substantially supported by the evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat.

§ 268.095, subd. 2(a) (2010). To determine whether an employee quit, this court considers whether the employee "exercise[d] a free-will choice to leave the employment." *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 897 (Minn. App. 1993); *see Nichols*, 720 N.W.2d at 594-95 (concluding that employee quit when she told her supervisor she had to leave, packed her personal belongings, left and did not make contact with the employer for two days); *Souder v. Ziegler, Inc.*, 424 N.W.2d 834, 835-36 (Minn. App. 1988) (finding that employee quit when she refused to sign a disciplinary form, left the premises and did not return); *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984) (holding that an employee quit when he wrote a resignation letter that was accepted by his employer). An employee is ineligible for unemployment benefits if the employee voluntarily quit the employment, unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2010). In contrast, a discharge occurs when "any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5(a) (2010); *see Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

Here, respondents were individually told by Beyer, the branch operations manager, that they had to sign the TSM agreement or they would no longer be able to work for the company. Respondents refused to sign the TSM agreement, but at no time did they tell Beyer that they quit their employment. Each respondent was then escorted out of the building. Relator's conduct in this situation would lead a reasonable employee to believe that he or she had been discharged. Moreover, the fact that respondents

refused to sign the TSM agreement does not mean that they quit their employment. While respondents chose not to agree to TSM, they did not "exercise a free-will choice" to end their employment. Instead, respondents were discharged by relator because of their decision not to sign the TSM agreement. We conclude that the ULJ's decision that respondents were discharged is substantially supported by the evidence and the law.

Relator also argues that the four respondents, who chose not to agree to TSM before their deadline, quit their employment. An employee is considered to have quit when he or she "has been notified that the employee will be discharged in the future" but "chooses to end the employment while employment in any capacity is still available." Minn. Stat. § 268.095, subd. 2(b) (2010). Kao Moua, Blong Moua, Chia Vue and Por Lee told Beyer before their respective deadlines that they were not going to sign the TSM agreement. They were also escorted out of the building. Like the rest of respondents, these four respondents did not tell Beyer that they quit. These four respondents did not exercise a free-will choice to end their employment, but instead, like the rest of respondents, they chose not to sign the TSM agreement. The fact that they notified Beyer of the decision not to sign the TSM agreement before the deadline they were given does not mean that they quit their employment. We conclude that the ULJ's decision that these four respondents were discharged is substantially supported by the evidence and the law.

An employee who was discharged is eligible for employment benefits unless the discharge was for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2010). "Employment misconduct" is defined as "any intentional, negligent, or indifferent

conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2010). "Whether an employee committed employment misconduct is a mixed question of fact and law." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The ULJ found that relator's requirement that respondents sign the TSM agreement by the deadline was unreasonable and the respondents did not commit misconduct when they failed to do so. Relator concedes that respondents did not commit misconduct but argues that the ULJ erred when she found that the TSM agreement was unreasonable. Relator argues that the TSM agreement was reasonable because there is a strong federal and state policy in favor of arbitration as a means of dispute resolution. We need not reach the issue of whether the TSM agreement was reasonable because relator has acknowledged that respondents did not commit misconduct and the reasonableness of the mandated policy is not at issue here. We conclude that the evidence substantially supports the ULJ's determination that respondents were discharged and did not commit misconduct.

Affirmed.