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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-846**

Wayne S. Jendro,
Relator,

vs.

Northern States Power Company Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 5, 2012
Affirmed
Minge, Judge**

Department of Employment and Economic Development
File No. 27120986-3

Wayne S. Jendro, New Brighton, Minnesota (pro se relator)

Northern States Power Company Minnesota, Denver, Colorado (respondent employer)

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

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

UNPUBLISHED OPINION

MINGE, Judge

Relator challenges the conclusion of the unemployment law judge (ULJ) that he quit his employment without a good reason caused by his employer and was therefore ineligible for unemployment benefits. Because there is substantial evidence in the record supporting the ULJ's finding that relator quit due to a coworker not following his instructions and because this circumstance did not rise to the level of the statutory standard of "a good reason caused by the employer," (Minn. Stat. § 268.095, subd. 1(1) (2010)), we affirm.

FACTS

Relator Wayne Jendro worked as a system-relay specialist for respondent-employer Northern States Power Company Minnesota from November 1980 until October 14, 2010, when he resigned. Jendro applied to respondent Minnesota Department of Employment and Economic Development (DEED) for unemployment benefits. DEED determined that Jendro was ineligible for unemployment benefits because he quit without a good reason caused by the employer. Jendro appealed that determination to a ULJ. At the evidentiary hearing, Jendro cited numerous reasons for quitting his job. The ULJ found "that the real reason Jendro quit was because he felt his co-worker did not follow his instructions" and concluded that, because a reasonable employee would have consulted a supervisor or manager in such a situation rather than quit, Jendro did not have a good reason to quit caused by the employer and was therefore ineligible for unemployment benefits. This certiorari appeal follows.

DECISION

The issue on appeal is whether the ULJ erroneously determined that Jendro did not quit for a good reason caused by his employer and was therefore ineligible for unemployment benefits. This court may modify, reverse, or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the findings or decision were "made upon unlawful procedure," affected by an error of law, or "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d)(3)–(5) (2010).

An employee who voluntarily quits employment is ineligible for unemployment benefits unless "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). "A good reason caused by the employer" directly relates to employment for which the employer is responsible, is adverse to the employee, and "would compel an average, reasonable worker to quit." *Id.*, subd. 3(a)(1)–(3) (2010). Moreover, the employee must "give the employer a reasonable opportunity to correct the adverse working conditions" before the conditions can be considered a good reason caused by the employer. *Id.*, subd. 3(c) (2010).

"The phrase good cause attributable to the employer does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (quotation omitted). "[T]o constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous

circumstances.” *Ferguson v. Dep’t of Emp’t Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976) (quotation omitted).

Determining an employee’s reason for quitting employment is a fact question for the ULJ to decide, whereas, determining whether that reason meets the statutory standard of “a good reason caused by the employer” is a legal question reviewed by this court de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000); *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986). “We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or more than a scintilla of evidence.” *Moore Assocs., LLC v. Comm’r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted).

Jendro argues that the evidence does not support the ULJ’s conclusion that he quit his employment because a coworker was not following his instructions. Jendro testified at the evidentiary hearing that, on October 14, 2010, he “had an employee who didn’t want to do anything that day and I just got frustrated and I said I quit and walked out and called my supervisor.” The record on appeal includes written correspondence from Northern States to Jendro, dated October 15, 2010, accepting his verbal resignation and a document written by Jendro stating that he “was upset and not completely in control of [his] emotions” when he quit. The first document indicates that the October 14 incident

was the catalyst for Jendro's decision to quit, and the second document confirms that Jendro quit in the heat of the moment. Therefore, the record includes substantial evidence in support of the ULJ's finding that Jendro quit his job because a coworker was not following his instructions.

Next, we review de novo the question of whether this frustration with a coworker constitutes "a good reason to quit caused by the employer." Jendro testified that he abruptly walked away from his job, called his supervisor, quit, and then declined when his supervisor asked him if he wanted to talk about what happened. Jendro's actions were precipitous and did not provide his employer with a reasonable opportunity to correct the adverse working condition, a necessary prerequisite for eligibility for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 3(c). Moreover, a reasonable employee would not immediately quit when in conflict with a coworker but instead seek out a supervisor to work through the issue. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that a personality conflict with a coworker is insufficient to constitute a good reason caused by the employer).

Jendro argues that there are other reasons, besides the October 14 incident, that he quit his employment and that these should be considered in determining his eligibility for unemployment benefits. Jendro asserts that he quit because a coworker had repeatedly threatened to kill him and because he was placed on probationary status after refusing to travel when his children were sick. However, Jendro testified that this coworker had not made any threats for three years and no longer worked alongside him. Similarly, there is no indication that Jendro's children were still sick or that travel was still an issue.

Jendro also asserts that he quit because his employer suspended his nuclear clearance in September 2010 after Jendro was anonymously accused of withholding information regarding drug use on company property.¹ Yet, Jendro admitted that his employer acted appropriately by investigating the anonymous complaint and that he did not know the typical procedure for handling such investigations. Moreover, Jendro admitted that he had only worked in a nuclear power plant a total of 15 days in the previous two years, was still allowed to work at other non-nuclear facilities, and earned the same rate of pay as before.

In reviewing these circumstances, which Jendro argues were reasons that he quit, we note that there is no evidence in the record that any of them were contemporaneous with his departure. Therefore, we conclude that the ULJ did not abuse his discretion in discounting them. Even if these issues affected Jendro's decision to leave his employment, they would not be good reasons to quit under the law.

In sum, because substantial evidence supports the ULJ's finding that Jendro quit because a coworker was not following his instructions, because Jendro did not provide his employer with an opportunity to correct the problem with the coworker, because a reasonable employee experiencing a personality conflict with a coworker would not abruptly quit, and because Jendro's other proffered concerns were not good reasons to

¹ Jendro included in his brief several other reasons for quitting that were not provided to the ULJ. Because Jendro makes these arguments for the first time on appeal, we do not consider them. *See* Minn. Stat. § 268.105, subd. 2(c) (2010) (requiring the ULJ in deciding a request for reconsideration to only consider evidence submitted at the evidentiary hearing); *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 709 n.1 (Minn. App. 2010) (noting that the record on appeal consists of the papers filed with DEED, the exhibits, and the transcript of the evidentiary hearing).

quit at the time Jendro quit; we affirm the ULJ's determination that the cause for Jendro's resignation did not meet the statutory standard of "a good reason to quit caused by his employer" and that he was not eligible for unemployment benefits.

Affirmed.

Dated: