**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1515**

Joseph Wray,
Relator,

vs.

Mediacom Communications Corporation,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed May 20, 2013**
**Affirmed**
**Hooten, Judge**

Department of Employment and Economic Development
File No. 29954423-2

Joseph Wray, Hibbing, Minnesota (pro se relator)

Mediacom Communications Corp., Waseca, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Chutich, Judge.

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

**HOOTEN**, Judge

Relator brings this certiorari appeal challenging the decision of an unemployment law judge (ULJ) that he voluntarily quit his employment when he settled his workers' compensation claims and resigned. Because there is substantial evidence in support of the ULJ's finding that relator quit his employment, and because relator did not quit because of a good reason caused by his employer, we affirm.

## FACTS

Relator Joseph Wray began working for respondent Mediacom Communications Corporation in 2007, as a full-time installer/technician. During his employment, he sustained a work-related injury and as a result, was placed on "restricted duty" throughout 2011. Relator last worked on March 14, 2012. On March 15, 2012, he had surgery to his wrist, and was recuperating until April 28, 2012, at which time his doctor lifted his medical work restrictions so that he could return to work. During the time period from March 15 to April 28, 2012, relator received temporary total disability benefits through the workers' compensation carrier of Mediacom.

On May 3, 2012, relator and Mediacom entered into an agreement to settle relator's workers' compensation claim against Mediacom on a lump-sum basis, which required that he provide a letter of resignation. Relator describes the separation as a "discharge from employment," claiming that he believed that he would have been discharged if he had not signed the settlement agreement and resigned. A witness for Mediacom explained that if relator had not signed the settlement agreement, he would

have been able to return to his restricted-duty job, but since this was a position created specifically for relator during the time he was recovering from surgery, this restricted work would not have been available to him indefinitely. When relator entered into the settlement agreement and resigned, the restricted-duty job was eliminated. Even after he had recovered from the surgery to his wrist, neither relator nor Mediacom believed that he could return to his prior job as an installer.

Relator applied for unemployment benefits from the Minnesota Department of Employment and Economic Development (DEED), which initially determined that he was eligible for such benefits. Mediacom appealed this determination, and a telephonic hearing was held before a ULJ. Following the hearing, the ULJ determined that relator was ineligible for unemployment benefits.[1] The ULJ found that relator was released to return to work without restrictions on April 28, 2012, and that relator signed the settlement agreement with Mediacom whereby relator was to submit a letter of resignation in exchange for a lump-sum settlement of his workers' compensation claims. The ULJ concluded that relator "was on an involuntary leave of absence" between March 15 and May 3 because of his surgery and recuperation. However, the ULJ also concluded that relator "quit and was not discharged," finding that "[relator] chose to end his employment in exchange for agreeing to the . . . settlement offer." The ULJ noted that

[1] Mediacom informed DEED prior to the hearing that relator was "still an employee" and was "receiving TTD benefits." At the hearing, respondent's witness explained that the only issue was the date on which relator became eligible for benefits. However, in its appeal of the initial determination of eligibility, Mediacom explained that relator was not discharged and was required to provide a signed resignation pursuant to the workers' compensation settlement agreement.

"[i]t does not follow that the settlement agreement would have added a stipulation that required [relator] to submit [a] resignation letter if [relator] had been in fact discharged." The ULJ also found that relator "quit without a good reason caused by" Mediacom given the stipulation in the settlement agreement, which "would not compel the average reasonable employee to quit and become unemployed, rather than remaining in the employment."

Relator requested reconsideration, asserting that he was discharged because of his work-related injury and the lack of alternate available work. The ULJ affirmed the previous decision, finding that the evidence relator submitted with his request would not have changed the finding that relator chose to end his employment.[2]

**D E C I S I O N**

Relator argues that he was discharged as part of the settlement with Mediacom, that he was performing all assigned duties until his surgery, and that he was willing to continue to perform such duties after being released from medical restrictions following surgery. DEED argues that relator quit his employment and asserts that relator fails to argue that he falls under one of the statutory exceptions to ineligibility.

[2] Relator submitted a letter from his attorney dated July 20, 2012, and a letter from Mediacom dated June 29, 2012. Mediacom's letter "serves as written notification that [relator's] employment with Mediacom has been terminated as of June 29, 2012. . . . in accordance with the settlement agreement that was signed and executed back in May 2012." The attorney who represented relator on his workers' compensation claim explained that Mediacom was sometimes able to accommodate relator's physical limitations, but that Mediacom "expressed concern about [relator's] ability to return to work" after his surgery. Any claims for further temporary disability, or other claims based on Mediacom placing limitations on relator's work, were not brought given the settlement and stipulation "wherein [Mediacom] insisted that [relator] not return to work with them."

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the conclusion, decision, findings, or inferences 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).

An applicant who quits employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). "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) (2010). "A discharge from employment 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. A layoff because of lack of work is considered a discharge." *Id.*, subd. 5(a) (2010). One exception to ineligibility applies if "the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3." *Id.*, subd. 1(1).

> A good reason caused by the employer for quitting 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) (2010). This analysis "must be applied to the specific facts of each case." *Id.*, subd. 3(b) (2010).

"Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). The reason an employee quit employment is a question of fact. *Embaby v. Dep't of Jobs & Training*, 397 N.W.2d 609, 611 (Minn. App. 1986). "Whether an employee had good reason to quit, however, is a question of law." *Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 367 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). This court views the ULJ's factual findings in the light most favorable to the decision and gives deference to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Factual findings will not be disturbed when the evidence substantially sustains them. *Id.*

DEED highlights the ULJ's finding that relator accepted the settlement offer from Mediacom in exchange for his resignation. Viewing the record in the light most favorable to the decision, we conclude that relator quit his employment and was not discharged. Relator was not directly or specifically informed that he would be discharged if he did not agree to the settlement. Instead, he was performing lighter restricted work for a significant period of time prior to surgery, and Mediacom claimed that his restricted-duty job was still available to him upon his return. *See* Minn. Stat. § 268.095, subd. 2(b) (2010) ("An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment *in any capacity* is still available, is considered to have quit the employment." (emphasis added)).

Rather than pursue continued employment with Mediacom or seek additional workers' compensation benefits, relator chose to resolve his workers' compensation claims by entering into a settlement, which included a requirement that he resign.

Substantial evidence supports the ULJ's finding that relator was not discharged, but voluntarily quit his employment. The ULJ's decision is also consistent with the statutory definition of a "quit from employment," which "occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a). This situation is distinguishable from the language of section 268.095, subdivision 5(a), which states that 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*." (Emphasis added.)

We also affirm the ULJ's conclusion that relator quit without a good reason caused by his employer given the settlement agreement.[3] In support of the ULJ's decision, DEED cites *Edward*, in which this court affirmed the conclusion that an employee who agreed to settle a workers' compensation claim in exchange for an agreement to resign was ineligible for unemployment benefits. 611 N.W.2d at 367. The

[3] On appeal, DEED merely responds to relator's argument that he did not quit, and does not address the issue of whether his resignation falls within a statutory exception. However, the ULJ specifically concluded that relator quit without a good reason caused by the employer given the settlement agreement. This court does not usually consider claims on appeal unsupported by argument or legal citation. *See State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010). However, Minn. R. Civ. App. P. 103.04 provides that this court "may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment." Thus, we will address the ULJ's conclusion that relator quit without a good reason caused by Mediacom.

facts established that the employee worked as "a caretaker/leasing agent," but in the course of his employment "suffered a low-back injury" and filed a workers' compensation claim. *Id.* This court noted that "[d]espite his injury, Edward was able to perform his job and continued to work full-time without restrictions for Sentinel for several years." *Id.* Eventually, the employee and employer agreed to a settlement of the employee's workers' compensation claims, under which the employee received a $30,000 payment in exchange for his resignation and a release of his claims. *Id.*

Rejecting the employee's argument that he quit because of a work-related injury and that a reasonable person would have accepted the terms of the settlement, this court reasoned that the settlement and the resignation lacked compulsion. *Id.* at 368. Critical to this reasoning was the fact that the employee admitted that he had the ability to perform his employment duties and had the option of rejecting the settlement, continuing to work, and continuing to pursue his workers' compensation claim. *Id.* This court also noted that personal reasons "only indirectly related to his employment," namely, frustration with the workers' compensation process, contributed to the decision to accept the settlement. *Id.* at 368–69.

The reasoning in *Edward* compels affirmation of the ULJ's decision that relator quit without good reason caused by Mediacom. Relator's hours and wages had not been cut or reduced prior to the settlement, and relator could have, consistent with *Edward*, chosen to remain employed, albeit in a "restricted duty" capacity, and, as noted by relator's attorney in a letter submitted with relator's request for reconsideration, could have continued to pursue relief through the workers' compensation system. While relator

expressed some concern about how long his restricted-duty job would continue, this vague speculation is not a sufficient basis to constitute good reason for an employee to quit. "Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(e) (2010). Notably, "our reemployment compensation statutory scheme is intended to benefit those who become unemployed through no fault of their own." *Edward*, 611 N.W.2d at 368.

We conclude that relator's decision to enter into the settlement was a personal decision, which, while arguably reasonable as a litigation strategy, does not equate to a good reason for quitting one's employment caused by the employer. *Id.* In this regard, relator's choice to forego additional workers' compensation proceedings and agree to the settlement is similar to the employee's decision in *Edward*, or one who resigns to take advantage of an early-retirement plan, in that there was no "'compulsion produced by extraneous and necessitous circumstances.'" *Id.* (quoting *Ferguson v. Dep't. of Emp't. Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976)); *see also Kehoe v. Minn. Dept. of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997) (concluding that employee who "voluntarily resigned to take advantage of an early retirement plan did not have good cause to quit attributable to his employer"). The ULJ did not err by concluding that relator quit his job without a good reason caused by Mediacom.

**Affirmed.**