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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0475**

Jerome Ottinger,
Relator,

vs.

Reeves Automotive, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 10, 2012
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 28893457-3

Jerome Ottinger, Eau Claire, Wisconsin (pro se relator)

Reeves Automotive, Inc., Little Canada, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that he is ineligible to receive unemployment benefits. Because substantial evidence supports the ULJ's finding that relator quit for personal reasons, we affirm.

FACTS

Relator Jerome Ottinger and his brother were employed at respondent Reeves Automotive, Inc. in Little Canada. The brothers drove to work together from their homes in Wisconsin. Ottinger's brother stopped working at Reeves Automotive in November 2011. On November 21, 2011, Ottinger resigned. The next day, Reeves Automotive offered Ottinger his job back; Ottinger declined, citing transportation issues.

Ottinger applied for unemployment benefits. In his application, he wrote that he quit due to "[t]ransportation. I lost my rideshare. Another employee [I] rode with no longer works there." Ottinger also indicated that he could not afford driving to work by himself. Respondent Minnesota Department of Employment and Economic Development (DEED) denied Ottinger's application, finding him ineligible to receive unemployment benefits.

Ottinger appealed the ineligibility determination, arguing that he quit due to a hostile work environment, denial of vacation time, and safety issues. The ULJ conducted an evidentiary hearing. Ottinger testified that he quit because his manager and coworkers made racist comments that offended him; he was previously laid off to prevent him from accruing vacation time; and Reeves Automotive did not ventilate paint and primer fumes

in accordance with OSHA regulations, which aggravated his nerve condition. Ottinger asserted that he did not state these reasons in his application because his slow typing repeatedly caused the online application to timeout and he thought it would be faster to write that he quit for transportation reasons. The ULJ determined that Ottinger quit due to his transportation difficulties, which was not a good reason caused by Reeves Automotive, and therefore is ineligible for unemployment benefits. Ottinger filed a request for reconsideration, and the ULJ affirmed his order. This certiorari appeal follows.

DECISION

We review a ULJ's order to determine whether it is "(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 not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). One exception is when an applicant quits for "a good reason caused by the employer." *Id.*, subd. 1(1). To qualify for this exception, the reason must (1) be directly related to the employment and for which the employer is responsible; (2) be adverse to the applicant; and (3) compel an average, reasonable employee to quit and become unemployed. *Id.*, subd. 3(a) (2010). Absent an agreement to the contrary, transportation is generally an employee's responsibility, and transportation problems do not constitute a good reason to

quit caused by the employer. *See Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W.2d 314, 316 (1976).

Whether an applicant's reason for quitting constitutes good cause attributed to the employer is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). But the reason why an applicant quit is a finding of fact. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (analyzing an applicant's reason for quitting as a question of fact). Findings of fact are reviewed in the light most favorable to the ULJ's decision and will not be disturbed if they are substantially supported by the evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to the ULJ's determinations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp't Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

Ottinger challenges the ULJ's finding that he quit for personal reasons related to transportation. Our review of the record reveals substantial evidentiary support for the ULJ's determination. Ottinger quit shortly after his rideshare arrangement ended. When Reeves Automotive asked him to reconsider his resignation, Ottinger declined, stating he had transportation issues. His application for unemployment benefits indicates that Ottinger quit because he lost his rideshare, and he acknowledged during the hearing that he "originally" quit due to rideshare issues. There is no evidence that Reeves Automotive agreed to assist Ottinger with transportation.

Ottinger argues that the evidence shows he actually quit because his work environment was hostile and unsafe. We disagree. The ULJ expressly discredited

Ottinger's testimony on this point because Ottinger did not mention these reasons in his application for benefits and could not remember the specific dates when he complained of these issues. We defer to the ULJ's credibility determinations. *Id.* Although Ottinger may have had legitimate concerns about his work environment and safety, substantial evidence supports the ULJ's finding that he quit for transportation reasons. Because an employee's transportation difficulties are not a good reason to quit caused by the employer, we affirm the ULJ's determination that Ottinger is ineligible for unemployment benefits.

Affirmed.