STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0759

George O. Welshons,
Relator,

vs.

Superior Truck Auto and Marine Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 20, 2008
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 1011 07

George O. Welshons, 35480 Old Homer Road, Winona, MN 55987-5692 (pro se relator)

Superior Truck Auto & Marine Inc., 936 68th Avenue, Minnesota City, MN 55959-1244 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for respondent department)

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

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

CONNOLLY, Judge

Pro se relator challenges an unemployment-law judge's (ULJ) decision that he was disqualified from receiving unemployment benefits because he quit (1) to accept other employment that did not provide substantially better terms and conditions of employment and (2) without good reason caused by the employer. Because the ULJ's decision is substantially supported by the record, we affirm.

FACTS

Prior to his decision to quit, relator George Welshons was employed by Superior Truck Auto & Marine, Inc. He began working for Superior on June 1, 2005. He quit Superior on December 8, 2006. He performed repairs on semi-trucks and boats at a final hourly pay rate of $20. He was scheduled to work 40 hours per week.

Relator quit his employment with Superior in order to pursue a similar position at another repair shop, the Koehler Collision Center. This position never materialized. Relator now claims that, despite his decision to quit his employment, he is entitled to unemployment benefits because (1) he accepted other employment that provided substantially better terms and conditions of employment and (2) he quit for good reason caused by the employer. Regarding the better terms of employment, relator argued to the ULJ that if he had actually gained employment at Koehler he would have had the potential to earn more money, more modern working conditions, and a shorter commute to work. Regarding the issue of whether he had a good reason to quit caused by his employer, relator essentially argued that he didn't like Superior's owner's management

style. In his testimony in front of the ULJ, relator complained that if he did not do something "right," then Superior's owner would get on his "case." Relator also noted that Superior's owner was harder to get along with when business slowed down. Finally, relator complained to the ULJ that after he made a mistake at work, Superior's owner called him at home to reprimand him.

Relator had established a benefit account with respondent, the Minnesota Department of Employment and Economic Development (DEED). A DEED adjudicator initially determined that relator was not qualified to receive unemployment benefits. After a de novo hearing, a ULJ reached the same determination. Relator requested reconsideration, and the ULJ affirmed. This matter is before us on a writ of certiorari obtained by relator pursuant to Minn. Stat. § 268.105, subd. 7(a) (2006), and Minn. R. Civ. App. P. 115.01.

D E C I S I O N

Whether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law reviewed de novo. *Markel v. City of Circle Pines*, 479 N.W.2d 382, 384 (Minn. 1992). 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 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) (2006). This court views the ULJ's findings in the light most favorable to the decision and will not disturb those findings that are supported by substantial evidence in the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

"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) (2006). "An applicant who quit employment is ineligible for all unemployment benefits" unless there is an applicable exception. *Id.*, subd. 1 (2006).

1. Substantially better terms and conditions of employment.

An applicant for unemployment benefits who quit one job to pursue another is not disqualified from receiving benefits when

> the applicant quit the employment to accept other covered employment that provided *substantially better terms and conditions of employment*, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment[.]

Id., subd. 1(2) (emphasis added).

Relator argues that he quit Superior to accept a position at another repair shop that offered substantially better terms and conditions of employment. Because the ULJ's finding that relator did not quit his employment at Superior to accept employment that provided substantially better terms and conditions of employment is supported by substantial evidence, we will not overturn it.

Relator now claims that his hours at Superior were cut back to less than 40 hours per week and that Koehler offered him 40 hours per week. However, the undisputed record before the ULJ indicated that relator was scheduled to work 40 hours per week at Superior. As a result, relator may not raise this issue now. *Imprint Tech., Inc. v. Comm'r of Econ. Sec.*, 535 N.W.2d 372, 378 (Minn. App. 1995) (explaining that matters not received into evidence at trial may not be considered on appeal). Thus, relator's claim that Koehler offered him 40 hours per week may not be viewed by this court as a substantially better term of employment because there is no evidence that relator was offered less than 40 hours per week while employed at Superior.

Relator was paid $20 per hour at Superior. He was offered only $17 per hour at Koehler. Relator argues that his pay was substantially better at Koehler because he had the opportunity to earn a commission. Beyond relator's unsubstantiated testimony that he knew someone who made $35 per hour at Koehler, there is no evidence in the record to indicate what his commission would actually have been. Absent further evidence, we cannot now overturn the ULJ's determination that Koehler's pay rate of $17 per hour is not a substantially better term of employment than Superior's pay rate of $20 per hour.

Finally, relator claims that he would have had more modern working conditions and a shorter commute at his new position. While these may be better terms of employment, they are not *substantially* better terms of employment. This is especially true in the factual context of this case where relator, if he had actually begun work at his new job, would have been performing the same type of work, with the same general hours, in the same general type of working environment.

2. Good reason caused by the employer.

Another exception to disqualification applies when 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 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) (2006).

A good reason to quit caused by 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); *see also* Minn. Stat. § 268.095, subd. 3(a); *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (holding that the relator did not have good cause to quit where the employer would not talk to her, greatly reduced her work duties, and made it clear he did not want relator there). Finally, "[i]f an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(c).

On one occasion, about a year prior to his decision to quit, relator complained to Superior's owner about his management style. Relator now claims that Superior's owner's management style provided him with a good reason to quit his employment. While this court certainly does not condone the use of abusive language in an employment setting, under the facts and circumstances of this case, the ULJ's finding that relator did not quit his employment for a good reason caused by his employer is supported by substantial evidence.

At the outset, it is worth noting that if an employee wishes to invoke the good-reason-caused-by-the-employer exception to Minnesota's general prohibition on providing unemployment benefits to employees who voluntarily quit employment, the statute requires that the employee both complain to his employer about the adverse working conditions, and give the employer a reasonable opportunity to correct the adverse working condition. In this case, the record is undisputed that relator made only one complaint to his employer. A lone complaint one year before an employee's decision to quit arguably does not even satisfy the statute's notice requirement.

However, even if relator's lone complaint did meet the statute's notice requirement, the personal animosity that existed between relator and Superior's owner did not rise beyond what this court has traditionally rejected as being a good reason to quit caused by an employer. This court has held on numerous occasions that personality conflicts with a supervisor are not a good reason caused by the employer for quitting. *E.g.*, *Portz*, 397 N.W.2d 12; *Bongiovanni*, 370 N.W.2d 697. In his testimony before the ULJ, relator described a supervisor who became short-tempered when business slowed.

While this may not be the best management practice, we cannot say that in this case it constituted a good reason to quit caused by the employer. In his testimony before the ULJ, relator never claimed that Superior's owner threatened him. Relator never detailed the language Superior's owner used. Relator merely complained that Superior's owner would go through "mood swings" and ride him when business slowed. By relator's own admission, this behavior was not continuous.[1] Under the facts of this case, the conduct relator complains of is simply insufficient under the statute to provide him with a good reason to quit.

Finally, we note that relator's appellate brief detailed a number of aggravating circumstances that he chose not to present during his hearing in front of the ULJ. In particular, relator now claims that his mental and physical health was damaged by Superior's owner's treatment toward him.[2] While these are serious allegations, we cannot properly consider them now because our role is limited to reviewing the decision of the ULJ based upon the facts contained in the record. *See* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal consist of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings"); Minn. R. Civ. App. P. 115.04, subd. 1 (stating that Minn. R. Civ. App. P. 110.01 generally applies to certiorari appeals).

Affirmed.

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[1] "The summer was the busiest part and things actually went pretty decent then. He was really good, actually pretty good, to work for then."

[2] Workplace criticism and harassment that lead to health issues can, under certain circumstances, constitute a good reason to quit. *Porrazzo v. Nabisco, Inc.*, 360 N.W.2d 662, 664 (Minn. App. 1984). However, this case is not before us.