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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1392**

Frank R. Zoubek,
Relator,

vs.

Voyager Electronics Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 29, 2008
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 4654 07

Frank R. Zoubek, 1131 117th Avenue Northwest, Coon Rapids, MN 55448 (pro se relator)

Voyager Electronics Corp., 5201 East River Road, Suite 303, Fridley, MN 55421 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

In this certiorari appeal, relator challenges the determination of the unemployment-law judge (ULJ) that he is disqualified from receiving unemployment benefits because he quit his employment when he indicated an intent to retire, arguing that it was the employer's decision to discharge him. Because the ULJ properly applied the law and did not abuse his discretion, we affirm.

DECISION

On certiorari appeal this court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006). Under Minnesota law, an employee who quits employment is disqualified from unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2006). A "quit" has occurred when "the decision to end the employment was, at the time the employment ended, the employee's" and remains a quit even if the employer declines to accept an employee's subsequent withdrawal of a notice of quit. *Id.*, subd. 2(a), (c); *see also Stream v. Continental Machs., Inc.*, 261 Minn. 289, 292, 111 N.W.2d 785, 788 (1961) (retirement as a voluntary quit).

Following a hearing, the ULJ concluded that relator Frank R. Zoubek had quit his employment based on his manager's testimony that at a meeting in May 2006, Zoubek informed her that he was planning to retire on December 31, 2006. The manager testified

that she took notes at the meeting, dated the notes, and placed them in Zoubek's employment file. No such notes were introduced into evidence, and neither Zoubek nor the ULJ requested production of the notes. Zoubek testified that he never gave notice of his intent to retire. The ULJ resolved the conflicting testimony by explicitly crediting the manager's testimony because "she made contemporaneous notes of the meeting[]."

We will uphold a ULJ's findings of fact if they are supported by substantial evidence, viewing those findings in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Credibility determinations are generally the "exclusive province of the ULJ and will not be disturbed on appeal." *Id.* at 345. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006); *see Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007) (case remanded where "ULJ made no [specific credibility] findings . . . [and] credibility was central to the decision because the ULJ's misconduct determination rests on incidents that [relator] disputes").

Zoubek essentially contends that the basis for crediting the manager is not supported by the record because the contemporaneous notes were never produced or entered into evidence.¹ Zoubek asserts that it was the ULJ's responsibility to request

¹ In challenging the manager's credibility, Zoubek also points out several inconsistencies in the manager's testimony. But the inconsistencies cited by Zoubek appear to be taken out of context or were later clarified in the manager's testimony. For example, the manager did acknowledge that Zoubek's November 14, 2006 e-mail stated that he

production of the manager's notes. Zoubek cites Minn. Stat. § 268.105, subd. 2(c) (2006), but does not specify which part of subd. 2(c) supports his proposition.

Presumably, Zoubek is relying on the following:

The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c)². Zoubek's presumed reliance on this statutory provision is misplaced. The statute says nothing at all about requiring the ULJ to order production of evidence or requiring an additional hearing on the ULJ's own initiative. Here, Zoubek did not seek to obtain or introduce the manager's notes, nor did he make a showing under either subd. 2(c)(1) or subd. 2(c)(2) that would require the ULJ to order an additional evidentiary hearing.

Zoubek cites no other authority that would require the ULJ to sua sponte request production of the manager's notes. Further, Zoubek fails to show how the manager's sworn testimony is lacking as substantial evidence to support the ULJ's credibility determination. Finally, Zoubek does not contest any other part of the ULJ's decision, i.e.

intended to return to work following his October 2006 surgery, but because the manager was under the impression Zoubek was going to return in order to help transition his accounts to his replacement, the manager would not have interpreted Zoubek's statement as an intent to return to work indefinitely.

² The other portion of subd. 2(c) states: "In deciding a request for reconsideration, the unemployment law judge shall not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing conducted under subdivision 1." Minn. Stat. § 268.105, subd. 2(c).

that he did not quit because of a good reason caused by the employer or that he did not quit because of a serious illness or injury making it medically necessary to quit. Accordingly, we affirm the ULJ's determination that Zoubek quit his employment and is thus disqualified from receiving unemployment benefits.

Affirmed.