STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2039

Larry J. Houn,
Relator,

vs.

Capital Granite & Marble Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 1, 2009
Affirmed
Schellhas, Judge

Department of Employment and Economic Development
Agency File No. 21086348-3

Larry J. Houn, 218 Public Avenue South, P.O. Box 93, Kilkenny, MN 56052 (pro se relator)

Capital Granite & Marble Inc., P.O. Box 375, Rockville, MN 56369 (respondent-employer)

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

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he quit without a good reason caused by his employer. Relator argues that (1) he had a good reason to quit that was caused by his employer and (2) the ULJ failed to acknowledge or address contradictory evidence. We affirm.

FACTS

In July 2007, relator Larry J. Houn began working for respondent Capital Granite & Marble Inc. in a salaried position as an outside salesperson earning $50,000 annually. Capital Granite provided relator with a company vehicle to use for sales calls. In May 2008, in response to relator's low sales figures, employer's owner, Charles Johannes, transferred relator to a different office location and informed relator that he thought the move would help with relator's productivity. Johannes also informed relator that he would "expect [relator's] sales to increase over time," and that "[he would] let [relator] know what the situation [was] with respect to the company vehicle."

Relator's sales figures failed to significantly improve and, on July 10, 2008, Johannes left relator a voicemail message, asking relator to contact him because he was "thinking about restructuring [relator's] position to more of a commission-based structure, but [Johannes] wanted to talk to [relator] and have him come up for a meeting to discuss it." Relator disputes this version of the voicemail message, stating that

Johannes's message stated that he would be changing relator's pay structure to straight commission and that the owner wanted the company vehicle returned.

Relator attempted to call Johannes on July 14, 2008. When Johannes had not returned his phone call within two hours, relator called again and left a voicemail message, stating that he could not accept the straight-commission position and that he would return the company vehicle. Relator then informed his office manager, Richard Nelson, that he would return the company vehicle keys by the end of the day because he had declined Johannes's offer for a straight-commission position in lieu of his salaried position. Relator told Nelson that he had not spoken with Johannes directly about the changed position but that he was under the impression that he was being "let go." Relator did not return to work after returning the keys. Later in the week, after relator quit, Johannes told Nelson that he had told relator that he wanted to put him on a straight-commission pay structure.

Relator filed for unemployment benefits on July 18, 2008, stating that he quit for good cause because his position was eliminated and he declined to accept a straight-commission position. Initially, relator was determined to be eligible for unemployment benefits. Capital Granite contested the determination and a telephone hearing was held before the ULJ on September 16, 2008.

On September 22, 2008, the ULJ issued her decision denying relator unemployment benefits. The ULJ determined that the evidence failed "to establish that [relator's] working conditions were so adverse as to justify his decision to terminate his employment." The ULJ concluded that "because [relator] failed to give Capital Granite

any reasonable opportunity to address his concerns . . . [and although relator] may have had good personal reasons for terminating his employment, the evidence fails to establish that [relator] voluntarily quit his employment for a good reason caused by Capital Granite." On October 10, 2008, relator filed a request for reconsideration, and after reconsideration, the ULJ affirmed her prior decision. This appeal follows.

D E C I S I O N

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) (2008). A party's substantial rights have been prejudiced when the findings, inferences, conclusion, or decision are affected by legal error or unsupported by substantial evidence in view of the entire record. *Id.*

"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). Determining whether an employee quit without good reason caused by the employer is a legal conclusion, which this court reviews de novo. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law).

Relator argues that the ULJ erred in determining that he was ineligible to receive unemployment benefits because relator had a good reason to quit that was caused by his employer. We disagree.

Pursuant to the unemployment-benefits statute, an employee is deemed to have quit "when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (2008). Generally, an employee who quits employment is ineligible for benefits unless an exception applies. *Id.*, subd. 1 (2008). One exception allows for the employee to receive benefits if the quit stems from "a good reason caused by the employer." *Id.*, subd. 1(1). The statute defines "good reason caused by the employer" as a reason that is "adverse to the worker," "directly related to the employment and for which the employer is responsible," and which "would compel an average, reasonable worker to quit and become unemployed." *Id.*, subd. 3(a) (2008).

Here, relator testified that he quit after Johannes left him a voicemail message definitively informing him that his pay structure was changing from a salaried structure to a straight-commission pay structure and also that Capital Granite was revoking his company vehicle. But Johannes testified that he left a message merely stating his desire to speak with relator about relator's pay structure and company vehicle, not that he was going to immediately implement any changes regarding relator's pay structure and company vehicle. Because there was conflicting testimony, the ULJ made credibility determinations regarding the testimony of both relator and Johannes and determined that, although relator quit his job after hearing that his payment structure *may* be changed and

that his company vehicle *may* be revoked, relator quit before he actually spoke to Johannes about the proposed changes. We defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. Thus, the crucial inquiry in this case is whether relator quit with good reason after receiving the voicemail message.

We conclude that it was unreasonable for relator to quit his employment upon hearing the voicemail message from Johannes that he wanted to speak with relator about a change in his payment structure because such a conversation is not necessarily "adverse to the worker." *See* Minn. Stat. 268.095, subd. 3(a) (stating that an employee has good cause to quit if the employer's actions are "adverse to the worker"). "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." *Wood v. Menard, Inc*., 490 N.W.2d 441, 443 (Minn. App. 1992) (quoting *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976)). Although it is reasonable for an employee to quit if his income is dramatically reduced, as relator claims his would be on a straight-commission basis, the ULJ did not find those facts in this case. *See e.g., Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn. 1981) (determining that a wage reduction of 20-25% was a good cause for voluntary termination of employment).

Here, relator incorrectly relies on *potential* income loss to assert that his income would suffer. Relator quit his employment before learning of the *actual* changes to his payment structure, if any, or whether he would be able to continue to use the company vehicle. The facts presented by relator do not reflect a reduction in his pay or

circumstances in which his employer breached a promise to increase the rate of pay. *See Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 419 (Minn. App. 2003) (holding that employee quit with good reason because employer substantially reduced wages and hours). Thus, because relator's income loss was only potential when he quit, we conclude that relator did not quit with good cause.

Relator also argues that the ULJ failed to acknowledge or address contradictory evidence that showed that he had good cause to quit. We disagree. At the time of the hearing, the evidence before the ULJ consisted of conflicting testimony about the content of the voicemail message left by Johannes. In her findings, the ULJ addressed the conflicting evidence by discussing the differing testimony of relator and Johannes regarding the content of the voicemail message. The ULJ specifically found that "[Johannes] conveyed in the message that due to [relator's] lack of sales, he was considering the possibility of placing him on a straight commission basis." And in her discussion about the reasons for her decision, the ULJ noted that "[relator] testified that he terminated his employment because he believed that the owner intended to change his compensation plan to straight commission and take away his car." The ULJ also discussed Johannes's testimony about the voicemail message, stating:

> If [relator] quit his employment because he believed that Capital Granite intended to change his compensation to straight commission and take away his car, he offered no compelling explanation for his failure to discuss his concerns in this regard with the owner prior to quitting his employment without notice. Since the evidence fails to establish that [relator's] working conditions were so adverse as to justify his decision to terminate his employment on July 14, 2008, and because he failed to give Capital Granite any reasonable

> opportunity to address his concerns, we conclude that while [relator] may have had good personal reasons for terminating his employment, the evidence fails to establish that [relator] voluntarily quit his employment for a good reason caused by Capital Granite.

The ULJ properly considered the conflicting testimony about the voicemail message when determining that relator was ineligible to receive unemployment benefits.

Affirmed.