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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-431**

Robert Johnson,
Relator,

vs.

AB Taxi and Shuttle of Austin Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 10, 2009
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 21262673-3

Robert Johnson, 1002 – 22nd Avenue Southwest, Austin, MN 55912 (pro se relator)

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Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal, by writ of certiorari, from the denial of unemployment-compensation benefits, Robert Johnson challenges the unemployment-law judge's determination that he quit his employment with AB Taxi and that AB Taxi's appeal was timely. Because the appeal was timely and Johnson was ineligible for benefits as of the effective date of his resignation, we affirm.

FACTS

Robert Johnson worked as a driver for AB Taxi from January 1 to April 13, 2008. After netting very little money for his April 13 shift, Johnson gave AB Taxi written notice that he would only work there for two more weeks. The next day, AB Taxi told Johnson that his two weeks of remaining shifts had been reassigned to other drivers.

In July 2008, approximately three months after his notice of resignation, Johnson applied for unemployment-compensation benefits. After first establishing that Johnson was an employee of AB Taxi, and not an independent contractor, the Minnesota Department of Employment and Economic Development sent AB Taxi a notice of the determination of employment status, which advised AB Taxi that the determination would become final if not appealed by October 9, 2008. The department inadvertently mailed the notice to the wrong address, and AB Taxi did not receive the notice until after the deadline. AB Taxi contacted the department and explained that they had not received notice of the employment determination in time to appeal, and the department issued a new notice with a deadline of November 6, 2008.

AB Taxi appealed the notice of employment determination, and an unemployment-law judge (ULJ) affirmed the conclusion that Johnson was an employee. During this time, the department issued its initial determination that Johnson was eligible for benefits, and AB Taxi also appealed this determination. The ULJ held a hearing, determined that Johnson was ineligible for benefits because he quit his employment, and concluded that none of the statutory exceptions applied. In response to Johnson's request for reconsideration, the ULJ affirmed its decision. Johnson now appeals.

D E C I S I O N

We first address Johnson's contention that AB Taxi's appeal was untimely. AB Taxi appealed two determinations: Johnson's status as an employee and Johnson's eligibility for unemployment benefits. As the ULJ explained at the hearing, AB Taxi's appeal of the employment determination was untimely only because the department had mailed its notice to the wrong address. After notice was properly delivered, AB Taxi responded within the appeal period. Johnson prevailed on the determination that he was an employee and not an independent contractor.

The determination at issue in this appeal is whether Johnson, as an employee of AB Taxi, is eligible for unemployment-compensation benefits. To appeal the initial determination of eligibility for benefits, AB Taxi was required to respond within twenty days of the October 17, 2008 notice. *See* Minn. Stat. § 268.07, subd. 3a(a) (Supp. 2007) (providing time period for appeal to ULJ). AB Taxi appealed on October 30, which was within the twenty-day appeal period. AB Taxi's appeal was timely, and we now turn to the merits of Johnson's subsequent appeal from the ULJ's determination.

We review a ULJ's decision to determine whether substantial rights were 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. Minn. Stat. § 268.105, subd. 7(d) (2008) (providing bases on which this court may review or modify ULJ's decision). The determination that an employee is disqualified or ineligible for unemployment benefits is a question of law on which appellate courts exercise independent judgment. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). In the resolution of conflicting testimony or the assessment of credibility, however, we defer to the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Absent an exception, a person who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2007). If an employee provides notice of his intent to quit but the employer does not allow the employee to work the entire notice period, the employee is considered discharged as of the date the employer no longer allows the employee to work. *Id.*, subd. 5(b) (Supp. 2007). If the date of this discharge is within thirty days of the date for which the employee gave notice, then the separation from employment is considered a quit as of the date for which the employee gave notice. *Id.* An employee who quits remains ineligible for benefits until he accrues "earnings in subsequent covered employment of eight times the applicant's weekly unemployment benefit amount." *Id.*, subd. 10 (Supp. 2007).

Johnson informed AB Taxi in writing on April 13 that he would quit two weeks later, on April 27. Because AB Taxi refused to allow Johnson to work his remaining two

weeks, Johnson was deemed to have quit, consistent with his resignation notice, on April 27, not on April 13, his last day of work. Although Johnson was discharged on April 14, this was less than thirty days from his effective date of resignation. He was, therefore, ineligible for benefits from April 27 until he earned sufficient income in subsequent, covered employment. When he applied for benefits in July, he had not earned the required subsequent income. Absent error in the ULJ's fact-finding or in its conclusion that no exception applied, the ULJ was correct in finding Johnson ineligible for benefits.

Johnson challenges the ULJ's determination by attempting to recharacterize his notice. He now states that he intended to leave open the possibility of working beyond April 27, and that the notice he gave was not definite. No testimony or evidence provided at the hearing supports this assertion. The evidence at the hearing was uncontradicted that Johnson "submitted a letter of resignation . . . [and] stated that his last day would be April 27." The ULJ's factual finding that Johnson quit effective April 27 is supported by substantial evidence and we will not retry the issue on appeal. *Jenkins*, 721 N.W.2d at 289 (stating that appellate court affirms ULJ's findings "as long as there is evidence that reasonably tends to sustain them"); *see also* Minn. R. Civ. App. P. 110.01, 115.04 (stating that papers, exhibits, and transcript from proceedings constitute record on appeal). In addition, Johnson did not contend at the hearing or in this appeal that he comes within any of the statutory exceptions to the general provision that a person who quits employment is ineligible for benefits.

Having concluded that the record supports the ULJ's determination that Johnson quit effective April 27, the question arises whether he was entitled to receive two weeks' worth of benefits for the notice period during which AB Taxi did not allow him to work. The department does not contest that Johnson would have been eligible for this two-week period if he had applied at the time the employer refused to let him work his final two weeks. The statutes, however, do not permit an employee to apply for benefits when the application is submitted months after the employer declines to allow the employee to work during the notice-of-resignation period. An applicant "may be eligible to receive unemployment benefits for any week if . . . the week for which unemployment benefits are requested is in the applicant's benefit year." Minn. Stat. § 268.085, subd. 1(2) (Supp. 2007). A benefit year is "the period of [fifty-two] calendar weeks beginning the date a benefit account is effective." Minn. Stat. § 268.035, subd. 6 (2006). "A benefit account . . . is effective the date the application for unemployment benefits was effective." Minn. Stat. § 268.07, subd. 3b(b) (Supp. 2007). These subdivisions together provide that an employee can receive benefits only for weeks in which the employee is eligible and which occur after the effective date of his application. As the department stated in its appellate brief, an application can be back-dated, at most, by one week. *Id.*, subd. 3b(a) (Supp. 2007). Johnson's July 2008 application therefore cannot result in two weeks' worth of benefits that he might have qualified for in April 2008.

Affirmed.