STATE OF MINNESOTA
IN COURT OF APPEALS
A09-831

Dennis Johnson,
Relator,

vs.

McLaughlin & Schulz Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 16, 2010
Affirmed
Halbrooks, Judge

Department of Employment and Economic Development
File No. 21767183-3

Kevin A. Velasquez, Blethen, Gage & Krause, PLLP, Mankato, Minnesota (for relator)

McLaughlin & Schulz Inc., Marshall, Minnesota (respondent)

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

Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

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

HALBROOKS, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment and did not request accommodation for his injury. We affirm.

FACTS

Relator Dennis Johnson worked intermittently for respondent McLaughlin & Schulz Inc., a highway construction company, over a 12-year period. Beginning in June 2007, Johnson worked full-time as an equipment operator. Johnson injured his neck and back while working on September 4. He subsequently left work in the middle of his shift on September 16 due to his neck and back pain. The following day, relator left his foreman a voice-mail message, stating that he had been in the hospital and would "keep in touch with the office by the doctor's reports." Johnson did not ask for time off or request an accommodation for his injury in this voice-mail message, and he had no other oral contacts with McLaughlin & Schulz thereafter. He filled out a workers' compensation First Report of Injury in October and subsequently received six weeks of workers' compensation benefits, retroactively beginning on September 4.

Johnson never returned to work after he left during his shift on September 16, 2008. Robin Stelter, McLaughlin & Schulz's payroll officer, testified that Johnson never asked for a leave of absence, despite the fact that the employee handbook required him to notify his foreman "if he is not going to be to work for any reason, on days that he is not capable." Stelter also testified that Johnson signed a document stating that he had read

his employee handbook. Johnson testified that he never asked for a formal leave of absence. When asked by the ULJ why he did not, Johnson answered, "I guess I never thought of it."

Johnson forwarded several letters from his physician to McLaughlin & Schulz.[1] The first letter, dated September 17, 2008, stated:

> Due to paroxysms of [disequilibrium] which have persisted intermittently over the last 3-4 years, please excuse [Johnson] from the operation of heavy equipment when symptomatic. He may however continue to work off of the equipment until his symptoms (i.e., dizziness, blurred vision, headache) have resolved.

On October 15, Johnson sent McLaughlin & Schulz another letter from his physician that stated, "Please excuse [Johnson] from lifting over 10 pounds from the floor and no operating heavy machinery. All for 3 months."

On November 6, 2008, McLaughlin & Schulz offered Johnson a light-duty position as a shop laborer that involved duties such as answering phones, organizing and running for parts, and cleaning. Robert Sussner, the office manager, testified that Johnson was not offered this position in response to a request for accommodation, but instead because McLaughlin & Schulz needed additional help, and Sussner thought that this position would be "a good opportunity to put [Johnson] to work." McLaughlin & Schulz informed Johnson that he needed to respond to their offer by November 10.

[1] The letters from Johnson's physician were provided in the appendix to his brief. The contents of these letters are not in dispute, and McLaughlin & Schulz did not move to strike them under Minn. R. Civ. App. P. 110.01 (limiting record on appeal to "papers filed in the trial court, the exhibits, and the transcript of the proceedings"). Accordingly, we will treat them as part of the record here.

Stelter testified that Johnson declined this offer in writing, stating that he was looking for a job with less strenuous activity. Johnson asserts that he wanted to talk to his physician before he accepted the offer but could not do so until November 17, and at that time his physician put him on "total disability."

Johnson sent McLaughlin & Schulz two more letters from his physician. One, dated November 17, 2008, states "[n]o work this week." The next letter, dated November 25, 2008, states "[p]lease excuse [Johnson] from work due to injury through 12-19-2008." There were no other communications between Johnson and McLaughlin & Schulz concerning Johnson's medical condition or his ability to return to work. Johnson testified that McLaughlin & Schulz never told him that he was terminated or laid off.

Johnson applied for unemployment benefits but a DEED representative determined that he was ineligible on the ground that he quit his job without good reason caused by his employer. Johnson appealed this determination, and an evidentiary hearing was held before the ULJ in February 2009. The ULJ affirmed the ineligibility determination, concluding that Johnson chose to end his employment and was therefore ineligible for unemployment benefits. The ULJ further concluded that the only exception to ineligibility that would apply in Johnson's case was the exception for employees who quit due to a serious illness or injury for which their request for accommodation was denied. But the ULJ found that Johnson did not request accommodation from his employer as required by this exception. This certiorari appeal follows.

D E C I S I O N

The first issue Johnson raises is whether he quit his employment. Generally, an employee who quits his job is ineligible for unemployment benefits unless one of the statutory exceptions applies. Minn. Stat. § 268.095, subd. 1 (2008). Whether an employee voluntarily quit is a question of fact. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). This court reviews findings of fact in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ, and will not disturb those findings as long as there is evidence in the record that substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Johnson takes issue with the ULJ's decision that he quit his job on September 16, 2008, the day he left his shift and did not return to his job, and argues that there is no evidence that he quit his job that day or at any time thereafter. Johnson asserts that the additional communications that he had with McLaughlin & Schulz after September 16, including his physician's letters, contradict the determination that he quit his job on that date.

But the relevant question on appeal is not the date on which Johnson quit his job, but whether he quit or was discharged. Both "quit" and "discharge" are defined by statute. "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) (2008). The ULJ heard testimony that Johnson left his job on September 16 and never returned to work, did not ask for a leave of absence, and was never told by McLaughlin & Schulz that he was fired or laid off. These facts substantially support the ULJ's

decision that Johnson's decision to leave his employment was his own. A discharge, conversely, occurs when an employer's words or actions "would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5 (2008). While Johnson claims that he was discharged, he does not identify any words or actions on McLaughlin & Schulz's part that would have caused a reasonable employee to believe that he would not be allowed to work for the company in any capacity. And Johnson testified that McLaughlin & Schulz never told him that he was fired or discharged.

It is undisputed that Johnson communicated with McLaughlin & Schulz after September 16. But these communications are not necessarily inconsistent with the ULJ's determination that Johnson quit his job, particularly given the fact that Johnson never explicitly asked his employer for a leave of absence, for accommodations for his injury, or for light-duty work. The record contains substantial evidence to support the ULJ's determination that Johnson quit.

Johnson alternatively argues that if he quit his employment, he is eligible for unemployment benefits on the ground that he quit because of his work-related injury. An applicant who quits employment may still be eligible for unemployment benefits if "the applicant's serious illness or injury made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7). But this exception applies only when the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available. *Id.* Johnson argues that the ULJ erred in concluding that he did not request accommodation and asserts that the physician's letters

that he provided to McLaughlin & Schulz in addition to the voice-mail message he left for his foreman constitute a request for accommodation.

By comparison, in *Madsen v. Adam Corp.*, this court reversed a ULJ's determination that the applicant failed to ask her employer to accommodate her health condition. 647 N.W.2d 35, 38-39. (Minn. App. 2002). In *Madsen*, even though the applicant did not explicitly ask her employer for an accommodation, unrefuted testimony showed that the applicant and her manager discussed both her condition and the possibility of a different job that could accommodate her condition. *Id.* Here, Johnson did not engage in such a discussion with his employer. While the physician's letters that Johnson forwarded to McLaughlin & Schulz described the kinds of duties that he was unable to perform, Johnson never communicated any interest in light-duty work or in maintaining his employment with McLaughlin & Schulz. Unlike the applicant in *Madsen*, Johnson did not engage in any discussion with his employer that would constitute a request for reasonable accommodation.

Affirmed.