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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-108**

Wallace Palmer,
Relator,

vs.

Intermediate District #287,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed October 5, 2010
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 23181954-3

Wallace Palmer, Eagan, Minnesota (pro se relator)

Intermediate District #287, Plymouth, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the unemployment-law judge's (ULJ) decision that he was ineligible for unemployment-compensation benefits, arguing that he quit because of a good reason caused by his employer when he was notified of a pending reduction of his position. Because substantial evidence supports the ULJ's determination that relator quit to avoid discharge, we affirm.

FACTS

Relator Wallace Lee Palmer worked as human-resources director for Intermediate District #287 from August 2005 until June 30, 2009, with a final annual salary of \$121,000. In February 2009, district administrators told Palmer of a recommendation to reduce his position from full-time to half-time, based on budget considerations, effective July 1, 2009. Palmer began discussions with the district to change that recommendation.

On March 26, 2009, the board approved the reduction of Palmer's position. A few days later, a district administrator received a report that Palmer had an inappropriate phone conversation with another employee. The employee reported that Palmer had stated that her position was being eliminated because she was "not a fit" for the district and asked if she wanted to talk. The employee stated that, although Palmer continued to call, she stopped picking up the phone, but he left messages that upset her.

The district placed Palmer on paid administrative leave and secured outside counsel to investigate Palmer's comments. The attorney conducted interviews and reviewed documents, which led her to expand the scope of the investigation to include

Palmer's work e-mail account. On April 22, the superintendent informed Palmer that the attorney had discovered evidence to support additional allegations that he had engaged in academic dishonesty, in violation of the district's administrator's ethical code, by using district computer resources and e-mail to write and scan college papers and a portion of a take-home exam for other individuals. The attorney also found evidence that Palmer made inappropriate comments about other administrators and disclosed confidential information, which was incompatible with district policies and with his position. The superintendent notified Palmer and his attorney that, based on the results of the investigation, she had decided to recommend Palmer's discharge.

Palmer responded, denying that he had engaged in conduct that violated district policies. Through his attorney, he also engaged in negotiations regarding voluntary resignation. On May 14, he signed a resignation agreement, which took effect on June 30.

Palmer applied for unemployment-compensation benefits, and a DEED adjudicator determined that he was entitled to benefits because he quit based on a good reason caused by the employer. The district appealed that determination. After a hearing, a ULJ determined that Palmer was ineligible for benefits because notification of discharge in the future is not considered a good reason to quit caused by the employer, and a preponderance of the evidence showed that Palmer quit to avoid discharge. On reconsideration, the ULJ affirmed the decision, and this certiorari appeal follows.

DECISION

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee is disqualified from receiving unemployment benefits is a question of law, which this court reviews de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

A person who quits employment is ineligible for unemployment-compensation benefits unless that person quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (Supp. 2009). A good reason caused by the employer must be a reason adverse to the employee that directly relates to the employment, for which the employer has responsibility. *Id.*, subd. 3(a)(1), (2) (2008). It must also be a reason "that would compel an average, reasonable, worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a)(3) (2008). Whether an employee quit because of a good reason caused by an employer requires a fact-specific analysis. *Id.*, subd. 3(b) (2008). An employee's decision to quit because of notification of future discharge or because of the employee's employment misconduct is not considered a good reason to quit caused by the employer. *Id.*, subd. 3(e), (d) (2008).

The parties agree that Palmer quit his employment. The ULJ found that a preponderance of the evidence showed that Palmer quit in order to avoid his probable discharge. Palmer, however, argues that he quit in response to the district's decision to reduce his position to half-time, which amounted to good reason to quit caused by the employer.

Minnesota appellate courts have held that substantial wage reductions amount to a good reason to quit caused by the employer. *See, e.g., Scott v. The Photo Ctr., Inc.*, 306 Minn. 535, 535–36, 235 N.W.2d 616, 616–17 (1975) (concluding that 25% wage reduction constituted good reason to quit employment); *McBride v. LeVasseur*, 341 N.W.2d 299, 300 (Minn. App. 1983) (concluding that 30% reduction was good cause to quit). But a claimant who chooses to leave employment, rather than face discharge, is considered to have voluntarily quit employment without a good reason to quit caused by the employer and is not considered eligible for unemployment-compensation benefits. Minn. Stat. § 268.095, subd. 3(d); *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985); *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984); *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 358 (Minn. App. 1983).

The evidence shows that Palmer was informed that his position would be reduced by 50%, with a commensurate pay reduction, and that the board approved this reduction. This percentage reduction is comparable to that which is considered a good reason to quit caused by the employer. *Scott*, 306 Minn. at 535–36, 235 N.W.2d at 616–17. But the ULJ questioned the credibility of Palmer's assertion that he quit because of the reduction

in his position, noting that he testified that the district retaliated against him because he refused to resign after the district decided to reduce his hours. This court defers to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. The ULJ was entitled to reject Palmer's argument that he resigned because of the pending reduction in his position and instead to credit the district's argument that Palmer quit to avoid imminent discharge. The ULJ also noted that the evidence showed that Palmer did not submit a notice of resignation until after a recommendation for his discharge had been submitted to the board. *See, e.g., Ramirez*, 340 N.W.2d at 358 (concluding that applicant was not entitled to unemployment benefits when he chose to resign his position so that his work record would not reflect a discharge).

Palmer also sets forth a different ground to support his claim that he quit for good reason caused by the employer. He maintains that the district's investigation of his conduct was "specious" and that a reasonable person would have quit if subjected to a similar investigation. He argues that the re-posting of his position as full-time after his resignation provides evidence that the district did not act in good faith in reducing his position. But the record contains no evidence that the district's investigation resulted in inaccurate information. And the later re-posting of the position as full-time is not relevant to the issue of whether Palmer quit because of a good reason caused by the employer so as to entitle him to unemployment benefits.

Palmer also maintains that the district retaliated against him for possible whistleblower allegations by reducing his position, which provided an additional good reason to quit caused by his employer. Palmer did not testify on this issue, and the ULJ

did not address it. Because the ULJ determined that Palmer quit because of his impending discharge, not because of the reduction of his position, she did not err by declining to rule on this issue, and we need not consider it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But we note that even if Palmer's whistleblower argument were relevant to the determination of his unemployment benefits, this sparse record contains minimal evidence tending to show that Palmer reported a specific law or rule violation to his employer or to a governmental or law enforcement agency, which is required for a whistleblower claim. *Cf.* Minn. Stat. § 181.932, subd. 1(1) (2008) (prohibiting adverse employment action based on employee's reporting of law violation).¹

Substantial evidence in the record supports the ULJ's determination that Palmer's resignation was not attributable to a good reason to quit caused by his employer, and the ULJ properly denied Palmer unemployment benefits.

Affirmed.

¹ The record contains an e-mail written by the superintendent to Palmer, stating that she requested specific instances of Palmer's whistleblower assertions, but he declined to give them. Palmer also wrote a personal memo alleging a violation of contract bidding requirements in ordering t-shirts, but he testified that he did not send the memo to district administrators.