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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-948**

Mustafa Ali,
Relator,

vs.

Imperial Parking, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 8, 2011
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 23258961-3

Mustafa Ali, St. Paul, Minnesota (pro se relator)

Imperial Parking, Inc., Philadelphia, Pennsylvania (respondent)

Lee B. Nelson, Christina Altavilla, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator appeals from the unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits, arguing that he did not quit his employment and that, even if he did quit, he quit with good reason caused by his employer. Because there is substantial evidence to support the ULJ's determination, we affirm.

FACTS

Relator Mustafa Ali worked as a parking-ramp cashier for respondent Imperial Parking, Inc. from March 2005 to July 23, 2009. In July, relator arrived at work to find a different employee working in his regularly assigned booth. On July 16, 2009, relator called his supervisor, Terry Gustafson, to complain. Gustafson replied that he would "try and move [relator] back to his old booth" before relator's next shift. Following their conversation, relator went to the "new" booth and completed his shift.

When relator arrived for his shift the following week, the same employee was still working in his old booth. In response, relator sought out Gustafson to complain. Gustafson told relator that the employee would be taking an extended leave of absence in two weeks and that relator would be able to return to his old booth at that time. Relator acquiesced and went to the new booth. But about one-half hour later, Gustafson received a call from the valet who stated that relator's booth was open and vacant and the cash register had been left open. Gustafson went to the new booth and saw relator sitting in his vehicle nearby. Relator told Gustafson, "I cannot work under these conditions." Relator got out of his vehicle and walked with Gustafson to the cashier's booth.

Gustafson told him that “[i]f you’re not going to work in this booth right now, basically you’re telling me you’re quitting.” Relator asked Gustafson if he wanted to count relator’s “float money,” and Gustafson declined. Relator then got back into his vehicle and drove through the exit lane, handing Gustafson his identification badge and float money before he left. Relator did not turn in his keys, nor did Gustafson ask for them. According to Gustafson, had he fired relator, he would have asked for relator’s keys. Gustafson testified that he had no reason to fire relator and that he was “very reliable . . . [and] a very good employee.”

Gustafson testified that he thought relator would return within a week to get his job back and that he would have been “more than willing” to take relator back. Relator went to human resources to request a termination letter following the incident, and human resources spoke with Gustafson, who filled out self-termination paperwork. Gustafson testified that he felt relator had quit because relator “walked off the job” and because he “never told [relator] to go home.”

Relator applied for unemployment benefits and respondent Minnesota Department of Employment and Economic Development (DEED) deemed him eligible for benefits because he was discharged for reasons other than employment misconduct. Imperial Parking appealed this determination, and the ULJ held an evidentiary hearing in October 2009. Relator and Gustafson both testified at the hearing. After a lengthy proceeding, the ULJ asked relator, who is Somali, if he was having trouble communicating and understanding the proceeding. Relator responded that he was and that it would be better for him to have an interpreter. The ULJ continued the hearing in order to obtain an

interpreter for relator. When the proceedings resumed, the interpreter was sworn in, and the ULJ summarized the testimony of relator and Gustafson so that it could be interpreted for relator. Relator agreed that the ULJ's summary of his own testimony was mostly correct and offered additional testimony with the aid of the interpreter.

The ULJ issued her findings of fact and conclusions of law on December 29, 2009. The ULJ concluded that relator is ineligible for unemployment benefits because he did not quit his employment because of a good reason caused by his employer. The ULJ discredited relator's testimony, finding Gustafson's testimony to be more credible. Relator requested reconsideration because he "believe[d] this decision [was] incorrect" and submitted additional exhibits with his request. The ULJ affirmed her earlier ineligibility determination, finding that relator failed to show good cause for not previously submitting his evidence and that, regardless, the evidence would not have changed the outcome of the proceeding. This certiorari appeal follows.

D E C I S I O N

This court will affirm a ULJ's decision unless it violates the constitution, exceeds statutory authority or the department's jurisdiction, is based on unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). We view the ULJ's findings in the light most favorable to the decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator argues that there is not substantial evidence to support the ULJ's determination that he quit his employment. Employees who quit employment are

ineligible for unemployment benefits except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). “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) (Supp. 2009). Whether an employee quit a job 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). The resolution of the issues in this case was based on the ULJ’s credibility determinations, and we defer to a ULJ’s credibility assessment. *Skarhus*, 721 N.W.2d at 344.

The ULJ found that relator left his cashier’s booth during his shift and that he told Gustafson that he could not “work under these conditions.” He then drove through the exit lane, handing Gustafson his identification badge and float money on his way out. Gustafson testified that he had no reason to fire relator and that relator had always been a good employee. The ULJ found that, based on these facts, the decision to end employment was relator’s and that he therefore quit. While relator offered contrary testimony, there is substantial evidence in the record to support the ULJ’s factual determinations based on Gustafson’s testimony, and we affirm the ULJ on this issue.

Relator argues that even if he is deemed to have quit his employment, he quit for good reason attributable to Imperial Parking. An individual is eligible to receive benefits if the applicant “quit the employment because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1). A good reason is one “that is directly related to the employment and for which the employer is responsible,” “that is adverse to the worker,” and “that would compel an average, reasonable worker to quit and become unemployed

rather than remaining in the employment.” Minn. Stat. § 268.095, subd. 3(a) (2008). “The determination that an employee quit without good reason [caused by] the employer is a legal conclusion,” which this court reviews de novo. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Relator argues that the lack of air conditioning in the booth in the middle of summer created an adverse work environment that would compel a reasonable worker to quit and become unemployed. But the ULJ noted that even if these conditions created an adverse work environment, relator failed to give his employer notice and a reasonable opportunity to correct the problem. An applicant who seeks unemployment benefits based on a claim of adverse working conditions must “complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(c) (2008).

According to relator, he informed Gustafson that the air conditioner in the reassigned booth was not working and that Gustafson stated that he would fix or replace it. But Gustafson testified that he was unaware of any then-current problems with the air conditioner in the booth. According to Gustafson, the air conditioner had malfunctioned twice in the preceding year, but had been fixed by maintenance. The ULJ credited Gustafson’s testimony that relator failed to inform him of a malfunctioning air conditioner, and we will not disturb that credibility finding on appeal. Because relator failed to give Gustafson notice of any adverse working conditions, he cannot now claim that he had a good reason to quit his employment. We therefore affirm the ULJ’s legal

determination that because relator did not have good reason to quit, he is ineligible for unemployment benefits.

Affirmed.