

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1044**

William N. Ruth,
Relator,

vs.

Kristico Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 8, 2008
Affirmed
Harten, Judge***

Department of Employment and Economic Development
Agency File No. 3558 07

William N. Ruth, P.O. Box 538, 224 First Avenue Northeast, Winnebago, MN 56098-0538 (pro se relator)

Kristico Inc., 3801 Third Avenue, Mankato, MN 56001-2735 (respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent DEED)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Harten,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HARTEN, Judge

Relator challenges the decision by the unemployment law judge (ULJ) that he was disqualified from receiving unemployment benefits because he quit without good reason caused by the employer. He argues that he had good reason to quit because his employer (1) provided inadequate compensation and fraudulently misrepresented its earnings in order to limit his pay; (2) breached its leave agreement with him; and (3) failed to provide workers' compensation coverage. He also argues that the Minnesota Department of Employment and Economic Development (DEED) improperly denied his request for a subpoena. We affirm.

FACTS

Relator William Ruth was an over-the-road truck driver for Kristico, Inc. from June 14, 2004, to January 11, 2007. Relator voluntarily quit his position with Kristico after he became dissatisfied with various aspects of his employment with the company. Shortly thereafter, relator applied for unemployment benefits with DEED. A department adjudicator determined that relator was disqualified from receiving benefits because he quit without good reason attributed to Kristico. Relator appealed the decision and a de novo hearing ensued.

At the hearing, relator cited three reasons for quitting that he believed constituted good cause: (1) inadequate pay; (2) an unfair employee-leave policy; and (3) a lack of worker's compensation coverage. First, relator complained that he was not adequately compensated under his pay agreement with Kristico. At the time relator quit, he received

30 percent of the gross receipts for each load he hauled. Relator claimed that this pay rate was unsatisfactory for an employee with his experience because it amounted to only 18 cents per mile for some loads. He also alleged that Kristico management misrepresented the amount of gross income they received per load in order to limit his pay.

Second, relator was unhappy with Kristico's leave policy. When relator first began working for Kristico, he was allowed to take absences from work for medical appointments without pay instead of using his paid time off. But after relator's first year with Kristico, the company required all employees to take paid time off for any absences. This substantially reduced the amount of time he had available for vacation each year.

Finally, relator took issue with Kristico's workers' compensation coverage. He testified about two instances when he was not fully compensated for his injuries. On one occasion, Kristico allegedly denied him coverage for a spider bite, claiming that worker's compensation did not permit recovery for injuries of that nature. The second incident occurred when relator lost a tooth after a gust of wind hit his trailer door as he was opening it. Kristico paid for relator's dentist visit, but did not compensate him for his pain medications.

Operations manager Jim Loken testified for Kristico. Loken challenged relator's assertion that Kristico had misrepresented the amount it received per load in order to limit his pay. Loken noted that relator's pay fluctuated depending on the load price negotiated with brokers; he explained that relator may have received inordinately small paychecks for a few loads because business was sluggish and brokers were not willing to pay as

much per load. Although relator's pay varied, Loken testified that relator averaged at least 35 cents per mile during the year preceding his voluntary quit. With respect to relator's complaints about the leave policy, Loken noted that the policy was implemented as a company-wide response to employee abuses of paid time off.

The ULJ found that relator did not have good cause to quit and thus was not entitled to employment benefits. Relator moved for reconsideration, but the ULJ affirmed the decision. This certiorari appeal followed.

D E C I S I O N

Relator claims that he quit for good cause and provides three different reasons for quitting that he believes entitle him to benefits. On review, we may affirm a ULJ's decision, remand it for further proceedings, or reverse or modify it

if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006).

Generally, an employee who quits his job is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2006). But an employee who voluntarily quits is still entitled to unemployment benefits if the decision to quit is the result of a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1). A

good reason to quit is a reason (1) directly related to employment, and for which the employer is responsible; (2) adverse to the worker; and (3) significant enough that it would “compel an average, reasonable worker to quit and become unemployed rather than remain in the employment.” Minn. Stat. § 268.095, subd. 3(a) (2006).

Whether an employee terminated his employment for good reason caused by the employer is a question of law, which we review de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003). We review factual findings in the light most favorable to the decision and will not disturb them so long as they are supported by substantial evidence. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

1. Compensation

Relator argues that he had good reason to quit because Kristico management misrepresented the amount of gross income they received per load in order to limit his pay. But the ULJ concluded that the “evidence and testimony at the hearing showed that Kristico was paying [relator] correctly,” and the record supports this finding. Loken testified and provided documentation that relator was paid according to the 30 percent rate agreed on by relator, and any fluctuation in pay was attributable to the load price previously negotiated between Kristico and transport brokers.

Relator also argues that his pay was inadequate for someone with his experience. But dissatisfaction with compensation, when the employee agreed to work for the challenged rate of pay, does not constitute good cause to quit. *See Ryks v. Nieuwsma*

Livestock Equip., 410 N.W.2d 380, 382-83 (Minn. App. 1987) (no good cause to quit job shown when evidence failed to show that employer breached employment agreement). Accordingly, relator's dispute with Kristico over wages did not entitle him to unemployment benefits.

2. Leave Policy

Relator asserts that Kristico's leave policy, which required him to use paid time off for medical appointments, would compel an average worker to quit. But the ULJ found that the leave policy is reasonable and applicable to all employees company-wide.

Relator also claims that Kristico breached an oral contract he negotiated with the company when he was hired that allowed him to be absent from work one or two days a month for medical appointments without taking paid time off. The breach of an oral agreement may constitute good cause. *See Krantz v. Loxtercamp Transp., Inc.*, 410 N.W.2d 24, 27 (Minn. App. 1987) (finding good cause for quitting when an employer breached an oral agreement with the employee regarding the employee's work schedule). But there is no evidence of an agreement that allowed relator to be absent without taking paid time off. At the hearing, relator testified, "I had told Mr. Loken straight out when he hired me that I had to go to the doctor once a month. And Mr. Loken said this is fine, we can work around this, and everything is fine." While this testimony demonstrates that Kristico was willing to accommodate relator's schedule, it does not support his argument that an oral contract existed that permitted him to be absent without using paid time off. At most, the record reveals that Kristico agreed to hire him despite his monthly absences. Moreover, even if an oral agreement had existed, there is no evidence in the record that

relator complained about any leave-related issues before quitting. An “applicant 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” to quit. Minn. Stat. § 268.095, subd. 3(c) (2006).

3. Workers’ Compensation

Relator also argues that he quit because he was denied workers’ compensation coverage for injuries that he sustained in the course and scope of his employment. Even assuming that this claim is valid, relator did not complain to Kristico about unpaid medical expenses despite incurring the injuries more than a year prior to his resignation. *See id.* (requiring an applicant to complain to an employer and provide the employer with a reasonable opportunity to correct the problem). Because he did not provide notice of this issue to Kristico, relator’s claim fails.

4. Subpoena Request

Finally, relator contends that DEED improperly denied his request for a subpoena to obtain testimony from Kristico’s former dispatcher:

Subpoenas are available . . . to compel the attendance of witnesses . . . upon a showing of necessity by the [applying party] A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious.

Minn. R. 3310.2914, subp. 1 (2007). Relator asserts that the dispatcher would have provided information regarding Kristico’s business practices, but he does not explain how the testimony would benefit his case. Moreover, in situations when DEED denies a subpoena request, a party “may request at the time of the hearing that the [ULJ] who

conducts the hearing issue the subpoena.” *Id.* Here relator neither requested a subpoena at the hearing nor showed that the witness’s testimony would have changed the result of the hearing.

Affirmed.