

*This opinion will be unpublished and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
A07-1225**

Guy A. Plante,
Relator,

vs.

J & C Trucking of Forest Lake Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 22, 2008
Affirmed
Willis, Judge**

Department of Employment and Economic Development
File No. 17632 06

Jeffrey D. Schiek, Villaume & Schiek, P.A., 2051 Killebrew Drive, Suite 611,
Bloomington, MN 55425 (for relator)

J & C Trucking of Forest Lake Inc., 1068 South Lake Street, Suite 13, Forest Lake, MN
55025 (respondent)

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

Considered and decided by Willis, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

WILLIS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ), who concluded that relator was disqualified for unemployment benefits because he quit without good reason caused by his employer. Because the ULJ properly applied the law and because the findings are substantially supported by the evidence, we affirm.

FACTS

From April 2004 until November 2006, relator Guy A. Plante worked as a truck driver for respondent J & C Trucking of Forest Lake, Inc. transporting goods throughout Minnesota, Iowa, and Wisconsin and returning to J & C Trucking's office nightly after finishing his shift. Both Plante and J & C Trucking must comply with federal regulations that set the maximum number of hours a truck driver may be on duty and require a certain period of off-duty time between periods of driving. As part of this obligation, Plante kept a log book in which he documented, among other things, the amount of time that he was on duty each day.

On November 14, 2006, Plante gave J & C Trucking two weeks' notice of his resignation because the hours were "getting to be too much." After Plante's final day on November 28, 2006, he applied for unemployment benefits, and an adjudicator with respondent the Minnesota Department of Employment and Economic Development determined that Plante was disqualified from receiving unemployment benefits. Plante appealed to a ULJ, who held a telephone hearing in February 2007.

At the hearing, Plante testified that (1) he had complained to J & C Trucking about violations of federal safety regulations, (2) he had “argued [his] hours for years,” and (3) there was “no doubt in anybody’s mind [about] what’s going on.” Plante also introduced portions of his log book, which showed that he had violated federal regulations on five occasions in the four-week period before he gave his notice.

Doyle Haley, J & C Trucking’s vice president, testified that the company was unaware of Plante’s mid-October through mid-November violations, that it never asked Plante to violate federal regulations, and that the company offered to pay for its drivers to stay at a hotel if, by continuing to drive, a driver would violate federal regulations. Haley also testified that (1) Plante’s route was significantly the same for his entire period of employment, (2) Plante had no difficulty completing his deliveries “week after week” without violating federal regulations, and (3) only in October 2006, when Plante experienced some “personal problems,” did he have trouble finishing his route in 14 hours. Haley testified that J & C Trucking’s dispatchers estimate the time it takes to make deliveries and have no way of knowing if something unexpected occurs (such as a flat tire) that results in a longer delivery unless the driver tells the dispatchers about it. Finally, Haley testified that, on the one occasion when Plante expressed concern that his route for the next day could result in a violation, dispatchers told him that he did not have to make the delivery.

In light of the conflicting evidence, the ULJ found that “Plante did not complain to management that his assignments needed to be adjusted because of DOT violations.” And because Plante had not complained about his reason for quitting, the ULJ determined

that Plante did not have good reason to quit caused by the employer, and, therefore, he was disqualified from receiving unemployment benefits. After Plante requested reconsideration of the ULJ's decision, the ULJ affirmed his initial determination, and this certiorari appeal follows.

D E C I S I O N

Plante contends that (1) the ULJ erred by requiring him to demonstrate that he had complained about his reason for quitting to J & C Trucking and, in the alternative, (2) the record does not support the ULJ's finding that he had not complained. An individual is disqualified from receiving unemployment benefits if he has voluntarily quit his job without good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (2006). It is undisputed that Plante voluntarily quit his job with J & C Trucking; the issue is only whether he had "good reason" caused by his employer, which is a question of law reviewed de novo. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). But we view the ULJ's findings of fact in the light most favorable to the decision, and we will not disturb findings when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

A good reason to quit caused by the employer is a reason "(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) 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) (2006). Additionally, a worker generally 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.” *Id.*, subd. 3(c) (2006); *see also Burtman v. Dealers Disc. Supply*, 347 N.W.2d 292, 294 (Minn. App. 1984) (holding that a worker’s failure to complain to the employer about the adverse working conditions “forecloses” a finding of good reason caused by the employer), *review denied* (Minn. July 26, 1984). But an employee need not first complain to preserve his ability to seek unemployment benefits when “an employer violates federal trucking laws related to the public safety.” *Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn. App. 1992).

I. The ULJ properly applied the law.

Plante contends first that the ULJ misapplied this court’s precedent, arguing that under the rule adopted in *Parnell*, “when the quit/resignation involves a violation of federal truck[ing] . . . regulations, the rules that normally require an applicant to notify his employer . . . do not apply.” Specifically, Plante claims that he was not required to complain to J & C Trucking before he quit to qualify for unemployment benefits because he had violated federal trucking regulations. We disagree.

Parnell does not hold that a violation of federal regulations by a truck driver gives the driver per se good reason to quit caused by the employer. Rather, *Parnell* stands for the proposition that a truck driver has per se good reason to quit—and therefore is not required to first complain to the employer—when the employer has violated federal trucking regulations, and in *Parnell* the employer admitted that it had violated such regulations. *See Parnell*, 484 N.W.2d at 443-45. *Parnell* is consistent with other decisions of this court, which have concluded that “[i]llegal conduct by an employer may

constitute good cause for an employee to quit.” See *Hawthorne v. Universal Studios, Inc.*, 432 N.W.2d 759, 762 (Minn. App. 1988) (emphasis added). Finally, to read *Parnell* in the manner that Plante urges would lead to the absurd result that a truck driver could unilaterally violate federal regulations, quit without complaining, and yet qualify for unemployment benefits. We conclude that, consistent with our decision in *Parnell*, an employee is not required to complain only when the employer violates federal trucking regulations.

Unlike in *Parnell*, the record here contains no credible evidence that J & C Trucking violated federal trucking regulations. The federal trucking regulation at issue here—the same regulation at issue in *Parnell*—provides:

No motor carrier shall permit or require any driver used by it to drive . . . , nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off-duty; or

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty

49 C.F.R. § 395.3 (2006).

The ULJ determined that, although Plante’s log books showed some violations, Plante had not demonstrated that J & C Trucking was aware of the violations, much less that J & C Trucking had violated the federal regulations by “permit[ing] or requir[ing]” Plante to drive more hours than allowed by the regulations.

The record evidence shows that J & C Trucking did not permit Plante to violate the maximum-hour regulations. The Federal Motor Carrier Safety Administration (FMCSA) has developed regulatory guidance to assist parties—including motor

carriers—who are bound by the maximum-hour regulations. *See* Regulatory Guidance for the Federal Motor Carrier Safety Regulations, 62 Fed. Reg. 16370 (1997). In interpreting 49 C.F.R. § 395.3, the FMCSA’s regulatory guidance provides that motor carriers “permit” violations of the maximum-hour regulations “if they fail to have in place management systems that effectively prevent such violations.” 62 Fed. Reg. at 16423-24.

Here, the evidence does not establish that J & C Trucking permitted Plante to violate the maximum-hour regulations by failing to have in place a management system to effectively prevent those violations. First, the record shows that J & C Trucking had a system in place to ensure that its drivers complied with federal regulations, including a “safety director” who reviewed the drivers’ log books and issued notices to a driver if the driver’s log books showed violations. And because Plante was out of compliance “on most occasions” by only “a period of between 15 minutes and one hour,” the ULJ found that the violations were “not so large that dispatchers or managers could not help but notice them.” And unlike the relator in *Parnell*, Plante has offered no evidence that his employer had been cited by the department of transportation for violating federal trucking regulations in the past. *See* 484 N.W.2d at 444.

Additionally, Plante has not even argued that his five violations in the three and a half weeks before he gave his notice show that J & C Trucking’s management system was unable to “effectively prevent” violations of the maximum-hour regulations. Even if he had, the record indicates that J & C Trucking’s management system generally worked. Plante had no violations in July, August, or October 2006. And in the month of

September 2006, when Plante's log book showed that he was in violation by 1.75 hours, J & C Trucking sent Plante a written reprimand. Moreover, on the only occasion that Plante requested a change in his route, a route that J & C Trucking's dispatcher calculated should take 11 hours to complete but Plante estimated could take longer than 14 hours, the dispatcher accommodated Plante's request, and he did not have to make the delivery.

Likewise, the record does not show that J & C Trucking required Plante to violate the federal regulations. Plante testified that he had complained to J & C Trucking that his routes resulted in violations of the maximum-hour regulations and that J & C Trucking required him to "tweak [his] log books to get the job done." But the ULJ credited the testimony of Plante's supervisor, who stated that "[w]e do not . . . put these people out on the road to do things illegal[ly]" and that Plante has "never once been told to tweak" his log book.

Because *Parnell* establishes a per se rule when the employer violates federal trucking regulations, and there is no credible evidence that J & C Trucking did so here, the ULJ properly determined that *Parnell* was inapplicable and that Plante was required to show that he complained about the fact that he was unable to complete his deliveries in accordance with the regulations. *See* Minn. Stat. § 268.095, subd. 3(c) (requiring an applicant to "complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions").

II. The record substantially supports the ULJ's finding that Plante had not complained.

Plante argues, in the alternative, that even if he was required to complain to establish good reason to quit caused by his employer, he demonstrated that he had

complained to J & C Trucking's management. Although Plante testified that J & C Trucking's management knew "what's going on" with regard to his violation of federal regulations, the ULJ rejected his testimony as "vague" and noted that "there is relatively little specific testimony about specific discussions taking place during the period leading up to Plante's quit date." The ULJ weighed the credibility of Plante's testimony and Haley's testimony that J & C Trucking did not know about the violations and found that "the evidence does not show that Plante directly complained to anyone in a position of authority about his schedule, [or] that it violated DOT regulations." We defer to the ULJ's credibility determination. *See Skarhus*, 721 N.W.2d at 344. Because Plante did not complain, he did not have good reason to quit caused by J & C Trucking, and, therefore, the ULJ properly concluded that he is disqualified from receiving unemployment benefits. *See Burtman*, 347 N.W.2d at 294 (stating that failure to complain forecloses a finding of good reason to quit caused by the employer).

Affirmed.