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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0603**

Jason A. Bartleman,
Relator,

vs.

TCF National Bank Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 10, 2009
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 20296245-3

Jason A. Bartleman, 7691 Stafford Trail, Savage, MN 55378-4301 (pro se relator)

TCF National Bank Minnesota, 200 Lake Street East, Wayzata, MN 55391 (respondent)

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

Considered and decided by Hudson, Presiding Judge; Minge, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that relator was ineligible for unemployment benefits because he quit his employment for a reason other than a good reason caused by his employer. We affirm.

FACTS

Relator Jason Bartleman worked full-time for respondent TCF National Bank Minnesota as a consumer-loan officer from October 22, 2007, through November 27, 2007, for a total of 37 days. When Bartleman was interviewing for the position he was told that consumer-loan officers were making up to \$1,000 to \$2,000 per month in commissions and that he would be working from either 8:00 a.m. to 5:00 p.m. or from 8:30 a.m. to 5:30 p.m. During the course of his three-week training period, relator was informed (1) that he had to close at least eight loans per month, and that doing so would earn him a minimum of \$300 in commissions; (2) that his working hours were 9:00 a.m. to 6:00 p.m.; and (3) that he would have to cold call potential customers. Bartleman was displeased to hear this information, felt that his interviewer had made misrepresentations to him, and concluded that TCF was not a good fit for him. He informed TCF on November 27, 2007 that he was quitting his employment with them.

A Department of Employment and Economic Development (DEED) adjudicator initially determined that relator was ineligible for benefits because he quit his employment for a reason other than a good reason caused by TCF. Relator appealed, and a de novo hearing was held before a ULJ. The ULJ affirmed the initial adjudication.

Relator filed a request for reconsideration. The ULJ affirmed its initial decision. This matter is before the court on a writ of certiorari obtained by relator pursuant to Minn. Stat. § 268.105, subd. 7(a) (2007) and Minn. R. Civ. App. P. 115.

D E C I S I O N

The standard of review is set forth in Minn. Stat. § 268.105, subd. 7(d) (2006), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision 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.

Whether an individual quit employment and the reason the individual quit are questions of fact for the ULJ to determine. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

Subject to certain exceptions, applicants who quit employment are ineligible for all unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2007). One of these exceptions is when an applicant quits for a good reason caused by his or her employer. *Id.* Whether an applicant had a good reason to quit is a legal question this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

I. Relator did not quit his employment within 30 days of his hire date.

One exception to ineligibility is when an applicant quits their employment within 30 calendar days of beginning their employment because the employment was unsuitable for them. Minn. Stat. § 268.095, subd. 1(3). Relator contends that he quit his employment on November 20, 2007, which is within 30 calendar days of the date he began his employment. The ULJ found that “the evidence shows [relator] did not give any written or verbal notice of quitting” within 30-days of beginning employment. We agree.

“We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Relator acknowledges that he did not inform TCF that he was quitting until November 27, 2007. Relator points out that there is no statutory requirement that he provide written or verbal notice of his decision to quit. While this is true, it still does not impact the validity of the ULJ’s finding in this case. TCF expected relator to work on November 27, 2007, and there is no evidence that relator’s actions expressed an intent to quit prior to this date. This evidence, when viewed in the light most favorable to the decision, substantially sustains the ULJ’s finding that relator did not quit within 30 calendar days of starting his employment.

II. Relator did not quit his employment due to a good reason caused by TCF.

Another exception to the rule that applicants who quit their employment are ineligible for benefits is “when the applicant quit for a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1. A good reason caused by the employer is defined as 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.” *Id.* at subd. 3(a). Relator contends that he quit for a good reason caused by his employer. Specifically, relator contends that, during his interview, he was misled about the hours he would be working, his commission structure, and the expectation that he would generate loans through cold calling. The ULJ found that these reasons did not constitute a good reason caused by TCF. We agree.

At a minimum, the reasons articulated by relator for his decision to quit would not “compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*

The 30-minute change in hours from what relator expected to work is, in relator’s own words, not that “big of a deal.” Regarding the commission structure and cold calling requirement, relator by his own admission did not even stay on long enough to earn a commission or determine if he could earn a commission through cold calling. An average worker would have at least stayed on long enough to find out whether or not he could earn the commission he desired before quitting. *See Rutten v. Rockie Int’l, Inc.*, 349 N.W.2d 334 (Minn. App. 1984) (holding that an employee’s reassignment to an

experimental commission program was not a good reason for quitting, even though it was arguably adverse to the employee).

While relator may dislike cold calling, it does not constitute a good reason to quit. *See Ferguson v. Dept. of Employment Servs.*, 247 N.W.2d 895, 900 n.5 (Minn. 1976) (quotations omitted) (“The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive”). Cold calling is a requirement of many jobs, especially sales jobs. Although it may be a task that is relished by few, a reasonable employee would not feel compelled to quit by the requirement that he generate customers through cold calling. *Id.* (quotations omitted) (“In order to constitute good cause . . . there must be some compulsion produced by extraneous and necessitous circumstances.”).

Affirmed.