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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1434**

Douglas Osborne,  
Relator,

vs.

Dick Olson Motors Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 27, 2010  
Affirmed  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 21731077-3

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Douglas Osborne (pro se relator)

Dick Olson Motors Inc., North Mankato, Minnesota (respondent)

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

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Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Collins, Judge.\*

## UNPUBLISHED OPINION

**LANSING**, Judge

In this certiorari appeal from the denial of unemployment benefits, Douglas Osborne challenges the determination that his grounds for quitting did not constitute a good reason that was caused by his employer. Because substantial evidence supports the unemployment law judge's finding that the employer's revised compensation plan did not result in a loss of Osborne's current benefits and because the change from an hours-at-work rate to an hours-billed rate was not projected to be sufficiently adverse to provide a good cause to quit, we affirm.

## FACTS

Douglas Osborne worked as an automotive technician for Dick Olson Motors, Inc. (Olson Motors) from May 2, 2005 until December 31, 2008. On December 26, 2008, Olson Motors notified Osborne of a revised compensation plan that was scheduled to go into effect on January 1, 2009.

The revised compensation plan changed the basis for Osborne's salary from an hours-at-work rate to an hours-billed rate. And it increased his hourly pay from \$14 to \$16. The half-page, written description of Osborne's 2009 compensation plan set forth his increased hourly rate, the change from the hours-at-work rate to the hours-billed rate,

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

his premium reimbursement for his medical plan and his various employee discounts. The half-page, written description did not list his vacation pay, holiday pay, personal leave time, or IRA contributions. Because these benefits were not listed, Osborne believed that he would no longer receive them. He did not ask his employer about the benefits that were not listed, but he decided to quit his employment. On December 31, 2008, Osborne told Olson Motors' president that he was quitting because he did not want to work under a compensation plan based on an hours-billed rate.

Osborne applied for unemployment benefits, but his application was denied because he had voluntarily left employment. He appealed, and, after a hearing, an unemployment law judge (ULJ) determined that he was ineligible for benefits because he did not quit for a good reason attributable to his employer. The ULJ affirmed this decision on reconsideration. By writ of certiorari, Osborne appeals.

### **D E C I S I O N**

An employee who quits employment is ineligible for unemployment-compensation benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2008). “[A] good reason [to quit] caused by the employer” is a statutory exception to ineligibility. *Id.*, subd. 1(1). The determination that an employee quit without good reason caused by the employer is a legal conclusion that we review de novo. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law); *see also Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (exercising independent judgment on issue of law). The facts that a ULJ relies on in making an eligibility determination must have the

requisite evidentiary support in the record. Minn. Stat. § 268.105, subd. 7(d)(5) (2008). We defer to the ULJ's credibility determinations and view the findings in the light most favorable to the decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ based the ineligibility decision on a finding that Olson Motors did not take away Osborne's vacation and leave benefits when it changed his compensation plan and a conclusion that the "evidence fails to show that the change in the pay plan was significant or would cause an average, reasonable employee to quit." A good reason for quitting caused by the employer is a reason that is directly related to employment, adverse to the worker, and that would compel an average, reasonable worker to quit. Minn. Stat. § 268.095, subd. 3(a) (2008).

The record provides substantial support for the ULJ's factual finding that Olson Motors did not intend to take away Osborne's benefit package, which included vacation and leave benefits and IRA contributions. Sherry Olson, the president of Olson Motors, testified that these benefits were provided according to provisions in the employee handbook and they are based on whether an employee is full-time or part-time and the number of years of employment with Olson Motors. Osborne did not directly dispute this testimony. He only said that, if he had ever seen an employee handbook, it had been a long time ago. He also acknowledged that he did not ask Olson or any other supervisor at Olson Motors whether his benefits had been cut. It was not an abuse of discretion for the ULJ to determine that Olson Motors did not change Osborne's benefits package.

The second part of the ULJ's decision, that the evidence fails to show that Olson Motors made a significant change in Osborne's pay plan, raises issues of both fact and law. A substantial reduction in salary may provide an employee with good cause to quit. *Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 536, 235 N.W.2d 616, 617 (1975) (holding that twenty-five-percent reduction in wages resulting from switch to commission from fixed salary established good cause for quitting); *McBride v. LeVasseur*, 341 N.W.2d 299, 300 (Minn. App. 1983) (holding that thirty-percent reduction in pay resulting from change to hourly pay rate from monthly salary established good cause for quitting).

Osborne and Olson Motors disagreed on how the revised compensation plan would affect Osborne. Osborne testified that he believed he would earn less money under the revised plan because his hours-billed time in December 2008 would only amount to about seventy percent of his at-work time. He also pointed out that if he worked on an hours-billed basis and the other automotive technician was employed on an hours-at-work basis, the work might be distributed unfairly because it would benefit Olson Motors to give the other technician more work.

In response, Olson testified that the other technician was employed on an hours-billed rate and was more efficient than Osborne, which motivated the change to Osborne's compensation plan. She also testified that, based on Osborne's skill and experience, he could earn nine to ten hours billed in an eight hour day. Finally, she pointed out that even if his daily hours billed were only seven rather than eight, he would still make the same amount of money because the revised compensation plan increased his hourly rate of pay from \$14 to \$16.

Determining the actual effect on Osborne's pay is not possible because Osborne did not continue his employment under the revised pay plan. Consequently, the ULJ had to assess the current circumstances and make a prediction to determine whether the effect, if any, would be sufficient to provide a good reason to quit. The testimony at the hearing did not conclusively show that Osborne would have received a reduction in income. Even if it were possible to predict a decrease in his income, the amount of the decrease would be even more difficult to predict. These factual circumstances weigh against determining, as a matter of law, that the revised compensation plan would have resulted in a significant reduction in pay. Consequently, we conclude that the ULJ did not err as a matter of law by relying on the facts in the record as a whole to determine that any change in Osborne's pay would not be sufficiently significant to justify quitting employment.

Osborne also challenges the ULJ's failure to consider further evidence submitted with his request for reconsideration. The ULJ is charged with ordering an additional evidentiary hearing if the additional evidence would likely change the decision's outcome and good cause exists for not previously submitting the evidence or if the submitted materials show that the evidence at the initial hearing was likely false. Minn. Stat. § 268.105, subd. 2(c) (2008). We evaluate a ULJ's denial of a request for an additional evidentiary hearing under an abuse-of-discretion standard. *Skarhus*, 721 N.W.2d at 345; *see also Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d 28, 30 (Minn. App. 1994) (deferring to commissioner's discretion not to hold additional hearing).

The evidence submitted with the request for reconsideration included Osborne's written accounts of statements from coworkers and an ad for an auto-technician job that offered earnings up to \$23.70 an hour. The ULJ concluded that the evidence submitted on reconsideration would not change the decision and that Osborne did not show good cause for not submitting the evidence at the initial evidentiary hearing. The ULJ also concluded that the additional submissions did not show that the evidence presented by the employer was likely false. The statements from coworkers only indicated whether or not they would have believed that omitting Osborne's vacation benefits from the half-page summary of the revised compensation plan meant that the benefits had been cut. One quoted statement was from the other automotive technician who said that he had been at one-hundred-percent work capacity in 2007 but not in 2008. The quoted statement did not indicate the amount of work capacity he achieved in 2008. The remaining submissions were a copy of the half-page revised compensation plan and an advertisement of another company's rate for an automotive technician. On this record we conclude that it was not an abuse of discretion for the ULJ to decline to reconsider the initial decision.

**Affirmed.**