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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1546**

Joshua Madison,  
Relator,

vs.

Lodging Services Inc. (ELC),  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 11, 2010  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 22738922-3

Joshua M. Madison, Minneapolis, Minnesota (pro se relator)

Lodging Services Inc. (ELC), Garden City, New York (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department of Employment and  
Economic Development)

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

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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.

## UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

The unemployment-law judge (ULJ) determined that relator Joshua Madison is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer, respondent Lodging Services Inc. (ELC). Because this determination contains no error of law and is based on findings that have the requisite evidentiary support, we affirm.

### DECISION

This court exercises independent judgment in reviewing a legal conclusion. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). But this court will not disturb the ULJ's factual findings where the evidence substantially sustains them. *Peterson v. Nw. Airlines Ins.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support." *Nichols v. Reliant Eng'g & Mfg, Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

On April 18, 2008, Madison took a full-time job as cook with Lodging Services. He worked one day, which he spent being trained by trailing his boss, the sous-chef. Madison claims the sous-chef made numerous sexual and sexually offensive comments to and about other employees.

Madison was scheduled to work the next day, April 19. He did not go to work but instead left a phone message with Lodging Services's human resources department that

he could not work because of the sous-chef's comments and that the matter needed to be discussed. Madison did not report to work or call Lodging Services again.

In 2009, Madison applied for unemployment benefits based on the loss of his job with Lodging Services. On the request for information, he told respondent Department of Employment and Economic Development (DEED) that (1) he worked 40 hours per week for Lodging Services; (2) he had not given Lodging Services advance notice that he was quitting; (3) he would have been uncomfortable if he had continued working; and (4) he left a phone message for Lodging Services. DEED contacted Lodging Services, which said Madison was a "no call/no show" and had abandoned his job. DEED then notified Madison that he was ineligible for benefits because he quit his job with Lodging Services.

Madison appealed, saying Lodging Services was at fault for the loss of his job. Lodging Services did not participate in the telephone hearing at which Madison testified that: (1) his employment with Lodging Services was full time; (2) he could have continued working for Lodging Services but chose not to do so; (3) he quit "because [he] didn't like [his] boss" and "because of the . . . unpleasant and hostile work environment . . . from the sous-chef"; and (4) he had no other reason for quitting. The ULJ asked Madison five separate times why he had not returned to work and given his employer an opportunity to resolve the problem. Madison answered that he did not want to go back until he had proper working conditions and that he did not see his decision not to go back to work as a quit.

The ULJ concluded that Madison quit without a good reason caused by his employer because he did not give his employer an opportunity to correct the adverse working conditions.<sup>1</sup> *See* Minn. Stat. § 268.095, subd. 3(c) (2008) (providing that adverse working conditions are not good reason to quit caused by employer unless employer has been given opportunity to correct adverse conditions). By not returning to work as scheduled and not attempting to contact the employer except through a phone message, Madison did not give his employer an opportunity to correct the adverse working conditions. Madison was determined to be ineligible for benefits and to have been overpaid \$3,333.

He requested reconsideration. His request did not address the ULJ's decision but said that, although Madison had testified to the ULJ that he was a full-time employee of Lodging Services, he had since found he "was hired only as a part-time employee." The ULJ affirmed his decision.

On appeal, Madison again does not address the ULJ's decision but argues that, because his employment with Lodging Services was part time, he is eligible for benefits under Minn. Stat. § 269.095, subd. 1(5) (2008) (providing that one who quits part-time employment and has also separated from full-time employment for reasons that do not defeat eligibility for benefits is not ineligible because of quit). But, at the time the ULJ determined that Madison was ineligible because he quit a full-time job, the only evidence available was Madison's testimony that his job was full-time. The ULJ could not

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<sup>1</sup> The ULJ did not imply, and neither does this court, that the working conditions of which Madison complained were not adverse.

consider evidence submitted after that determination was made. *See* Minn. Stat. § 268.105, subd. 2(c) (2008) (providing that, on request for reconsideration, ULJ may not consider any evidence not submitted at hearing). Nor may this court consider new evidence. *See* Minn. R. Civ. App. P. 110.01 (restricting record on appeal to papers filed with previous decision-maker, exhibits, and transcripts).

Madison provides no indication that the ULJ's findings lack evidentiary support or that the decision was based on an error of law.

**Affirmed.**