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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1609**

Steven L. Jarvis,
Relator,

vs.

Pro Systems Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 10, 2013
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 29589852-3

Steven L. Jarvis, Lake Park, Minnesota (pro se relator)

Pro Systems Corporation, Detroit Lakes, Minnesota (respondent)

Lee B. Nelson, Colleen Timmer, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator appeals the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment. We affirm.

FACTS

In early 2012, relator Steven Jarvis began his employment with respondent Pro Systems Corporation, which was doing business as Attachments International. Jarvis's employment with Pro Systems ended March 20, 2012. Jarvis applied for unemployment benefits, and the Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible for unemployment benefits. Jarvis appealed DEED's determination, and a ULJ conducted an evidentiary hearing.

At the evidentiary hearing, the owner of Pro Systems—Jerry Henry—testified that he had a conversation with Jarvis on March 20, 2012, because Jarvis had been “coming in so late some days.” During the conversation, Henry told Jarvis that he had been “hired . . . for full-time work” and that Jarvis's “hours are a little erratic.” Jarvis told Henry that he had “an opportunity to go to college and he would like to do that, and consequently he [could] no longer come in full-time.” Henry told Jarvis that, because Pro Systems was extremely busy, it would have to hire a full-time replacement worker if Jarvis would not work full time. Jarvis asked if he could work part time, and Henry agreed to this arrangement but told Jarvis that he would need to call in advance to coming in to see if work was available. Jarvis never called after March 20.

Jarvis's testimony differed significantly from Henry's. Jarvis testified that, sometime in early February 2012, he enrolled in an associate-degree program because "at the time it seemed to [him] that there was no work" at Pro Systems. Jarvis also testified that, after enrolling in the associate-degree program, he e-mailed Henry to inform him that he would like to work part time because of school and, on February 6, received an e-mail from Henry's wife, who said, "[T]hat would be just fine, thank you." Thereafter, Jarvis considered himself part time. Although Jarvis testified that he had possession of the e-mails, he did not offer them as evidence. His stated reason for not doing so is unclear from the record.

Jarvis testified that, during the conversation on March 20, Henry said, "I thought you were gonna call before you came in" and confirmed that Jarvis would need to call before he came to work. Jarvis claimed that he told Henry that if he did not have work, he could lay him off and that Henry said, "[O]kay that will work for me," and walked out of the shop. Jarvis stated that, "As far as [he] was concerned when [he] left full-time to go part-time [he] was still an employee of Jerry Henry and as such [he] never quit"; Henry laid him off. Jarvis and Pro Systems agree that Jarvis did not work for Pro Systems after March 20, 2012.

The ULJ noted the parties' conflicting evidence about Jarvis's employment status and found that Pro Systems' evidence was more credible than Jarvis's because "Jarvis's evidence was self-serving, inconsistent, based on unsubstantiated hearsay, and did not provide a plausible sequence of events." The ULJ noted that Jarvis offered no credible evidence to support his unsubstantiated allegations that he advised Pro Systems by e-mail

that he was enrolled in school and wanted to work part time and that Henry's wife told him that Henry gave his consent. The ULJ found that Jarvis's explanation made "no sense because Henry testified credibly that he had plenty of work available for Jarvis on March 20th and, in fact, told Jarvis that he needed Jarvis to increase his hours to full-time." The ULJ concluded that Jarvis quit his employment with Pro Systems and that no exception to ineligibility applied. The ULJ affirmed DEED's determination that Jarvis was ineligible for unemployment benefits.

Jarvis submitted a request for reconsideration, claiming that "Henry lied, he laid me off in front of a witness." Jarvis submitted two exhibits with his request for reconsideration. The first was a typed statement in which Jarvis stated that he started school after a "number of weeks" when there was "very little work" at Pro Systems and that, after he started school, he "called [Henry] at his house" and "asked him if [he] could go part time temporarily while there was no work" and Henry "said that would be fine." Jarvis also submitted a statement purportedly from a Pro Systems employee who was present in the room during the conversation on March 20. In its entirety, the employee's statement read: "[Jarvis] asked to be laid off because of lack of work, and [Henry] said OK." Jarvis stated that he had not previously provided the information because a Veteran's Representative at the Minnesota Workforce Center told him he did not have to.

The ULJ denied Jarvis's request for reconsideration. The ULJ noted that she informed Jarvis at the beginning of the evidentiary hearing that "he had the right to request that the hearing be rescheduled so that documents or witnesses could be subpoenaed"; that the Appeal Hearing Guide that was mailed to Jarvis stated that "the

parties can present anything that supports the testimony presented by the parties”; and that despite the information provided to Jarvis, he failed to inform her that the other Pro Systems employee “would testify on his behalf, nor did he offer into evidence a statement from” the other Pro Systems employee. The ULJ concluded that Jarvis’s “explanation for his failure to present evidence at the evidentiary hearing was unacceptable in light of the information he received from the Appeals Hearing Guide and from the [ULJ] regarding his right to present evidence at the hearing.” Moreover, the ULJ concluded that the new evidence would not change the outcome of the hearing because it “was vague,” it was not a sworn statement, it purported to describe a conversation that took place months earlier, and “there was no indication on the face of the document to support . . . that . . . [the other Pro Systems employee] actually drafted and signed the statement.”

This appeal by writ of certiorari follows.

D E C I S I O N

Jarvis argues that Pro Systems laid him off and that he did not quit. His pro se brief is essentially a summary of his testimony from the evidentiary hearing during which he argued that he began school and started working part time because Pro Systems did not have enough work and laid him off due to lack of work.

This court may reverse or modify a ULJ’s decision if the relator’s substantial rights were prejudiced by findings, inferences, conclusions, or decisions “affected by . . . error of law” or “unsupported by substantial evidence in view of the entire record as

submitted.” Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (2012).¹ “Whether an employee has been discharged or voluntarily quit is a question of fact subject to our deference.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). This court “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted). “In unemployment benefit cases, the appellate court is to review the ULJ’s factual findings in the light most favorable to the decision” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We defer to the ULJ’s ability to weigh conflicting evidence. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

An applicant for unemployment benefits is ineligible if he quits employment, unless he falls under a statutory exception to ineligibility. Minn. Stat. § 268.095, subd. 1 (2012). “A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2012). “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” Minn. Stat. § 268.095, subd. 5(a) (2012).

¹ We cite the most recent version of Minn. Stat. § 268.095 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes cited in this opinion.

Credibility determination

Here, the ULJ's finding that Jarvis quit was based on her explicit determination that Henry's testimony that Jarvis quit was credible and Jarvis's testimony to the contrary was not credible. This court will "defer to a [ULJ]'s credibility determinations . . . that are supported by substantial evidence." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 527 (Minn. App. 2007); *see also Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) ("Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal."). "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2012). As noted above, the ULJ explained the bases for her credibility determinations. The ULJ properly considered the implausible and self-serving nature of Jarvis's testimony. *See Ywswf*, 726 N.W.2d at 532–33 (noting that relevant factors for determining credibility include whether the witness will "gain or lose if th[e] case is decided a certain way" and whether the testimony is reasonable compared with other evidence (quotation omitted)). The ULJ provided the statutorily required reasons for her credibility determination, and that determination is supported by substantial evidence. *See id.* at 533–34 (affirming ULJ's decision, which was based on credibility determination, when the "ULJ's findings [were] supported by substantial evidence" and she "provided the statutorily required reason for her credibility determination").

Deferring to the ULJ's credibility determinations, we conclude that substantial record supports the ULJ's finding that Jarvis quit.

Request for reconsideration

We conclude that the ULJ did not abuse her discretion by denying Jarvis's request for reconsideration. After a party files a timely request for reconsideration, the ULJ may modify the original findings of fact and decision, set aside the original decision and order an additional evidentiary hearing, or affirm the finding of facts in the original decision. Minn. Stat. § 268.105, subd. 2(a)(1)–(3) (2012). The ULJ must order an additional evidentiary hearing when a party submits evidence not submitted at the initial evidentiary hearing that:

(1) would likely change the outcome of the decision and there was good cause for not having previously submitted the evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id., subd. 2(c) (2012). This court “defer[s] to a ULJ’s decision to grant or deny an evidentiary hearing and will reverse only for an abuse of discretion.” *Vasseei v. Schmitty & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010).

Jarvis submitted two exhibits with his request for reconsideration: his own typed description of his employment history with Pro Systems and a hand-written statement purportedly from another employee who overheard the conversation between Jarvis and Henry.

We conclude that the ULJ properly determined that, under section 268.105, subdivision 2(c)(1), Jarvis had no good cause not to submit the two statements at his evidentiary appeal hearing. Moreover, neither of the statements submitted by Jarvis was “likely [to] change the outcome of the decision,” as required by section 268.105, subdivision 2(c)(1). Jarvis’s typed statement includes assertions inconsistent with record evidence, and the ULJ properly rejected the purported statement from another employee for the reasons the ULJ stated. Neither of the statements showed that the evidence submitted at the evidentiary hearing was likely false evidence that had an effect on the outcome of the decision, as required by section 268.105, subdivision 2(c)(2). The ULJ did not abuse her discretion in concluding that Jarvis’s newly submitted evidence did not meet the requirements of Minn. Stat. § 268.105, subd. 2(c).

Affirmed.