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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2209**

Mark Meade, Relator,

vs.

Wal-Mart Associates, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed August 13, 2012
Affirmed
Chutich, Judge**

Department of Employment and Economic Development
File No. 28366420-3

Mark Meade, Grand Rapids, Minnesota (pro se relator)

Wal-Mart Associates, Inc., St. Louis, Missouri, (for employer respondent)

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

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Mark Meade challenges the decision of the unemployment-law judge (judge) that he is ineligible for unemployment benefits because he quit his employment.

He contends that (1) respondent Wal-Mart Associates, Inc.'s appeal from the initial eligibility determination was untimely; (2) he demonstrated good cause for failing to appear at the hearing; and (3) he did not quit his employment. Because substantial evidence supports the finding that Meade quit his job, we affirm.

FACTS

Meade worked for Wal-Mart Associates, Inc. (Wal-Mart) from March 27, 2008, through July 1, 2011, as a full-time night stocker. Meade was scheduled to work on June 25, 2011, but was a "no-show." Meade returned to work on June 28, and worked through July 1. He then called in sick on July 2. Meade was next scheduled to work on July 5 and 6, but he never went back to work and never called in sick. Nor did Meade ever submit a formal letter of resignation.

Meade filed for unemployment benefits, claiming that he was discharged for attendance issues. Respondent Minnesota Department of Employment and Economic Development (department) determined Meade was eligible for unemployment benefits because "absence due to illness, with proper notice to the employer" was not employment misconduct.

Wal-Mart appealed the department's determination, and a telephone hearing was set for September 21, 2011. The department mailed hearing notices to Meade and Wal-Mart. On September 21, the unemployment-law judge called Meade at the beginning of the hearing and left a message stating that Meade should call back promptly. Meade never returned the call and did not participate in the appeal hearing. Wal-Mart Assistant Manager Lori Dettmer testified at the hearing for Wal-Mart. The judge determined that

Meade quit employment and therefore was ineligible for unemployment benefits. Meade filed a request for reconsideration, and the judge affirmed his original decision. This certiorari appeal followed.

D E C I S I O N

I. Timeliness

Meade first argues that Wal-Mart's appeal from the determination of eligibility was not timely. An untimely appeal must be dismissed for lack of jurisdiction. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 740 (Minn. App. 2006). "An agency decision of whether to dismiss an appeal as untimely is a question of law, which we review de novo." *Id.* at 739.

"A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendar days after sending." Minn. Stat. § 268.101, subd. 2(f) (2010). Here, the department issued its initial eligibility determination on August 18, 2011. Wal-Mart filed its appeal on September 7, the twentieth calendar day after the initial eligibility determination was filed. Thus, Wal-Mart's appeal was timely and the judge had jurisdiction to hear the appeal.

II. Additional Evidentiary Hearing

Meade contends that the unemployment-law judge erred by not holding an additional evidentiary hearing. If a party who failed to participate in the evidentiary hearing shows good cause for such failure, the judge must order an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(d) (2010). "Good cause" is defined as "a reason

that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.* This court reviews the judge’s decision on whether to hold an additional hearing for an abuse of discretion. *Skarhus v. Davanni’s, Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

On reconsideration, Meade claimed that he did not receive the hearing notice until September 23, even though it was postmarked on September 12. The judge did not find this argument persuasive because Meade did not supply any “corroborating evidence such as a showing that other mail was similarly delayed during that time frame, or correspondence to or from the postal service regarding the alleged problem.” Additionally, the judge noted that after calling Meade to participate in the September 21 hearing, he left Meade a message instructing him to promptly call the department, and it was curious that Meade never returned the call. A reasonable person under these circumstances would have called the department when he received this message even if he had not yet received notice of a hearing. The judge acted within his discretion by denying Meade’s request for an additional evidentiary hearing.

III. Quit Determination

Meade appears to challenge the unemployment-law judge’s finding that Meade quit his job. “Whether an employee has been discharged or voluntarily quit is a question of fact.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). We view the judge’s factual findings in the light most favorable to the decision and give deference to the judge’s credibility determinations. *Skarhus*, 721

N.W.2d at 344 (citations omitted); *see also Nichols*, 720 N.W.2d at 594 (“When witness credibility and conflicting evidence are at issue, we defer to the decision-maker's ability to weigh the evidence and make those determinations.”). When substantial evidence supports the judge’s factual findings, we will not disturb them. *Skarhus*, 721 N.W.2d at 344.

An applicant who quits employment is ineligible for all unemployment benefits unless he falls under a statutory exception to ineligibility. Minn. Stat. § 268.095, subd. 1 (2010). “A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” *Id.*, subd. 2(a). “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.” *Id.*, subd. 5(a).

Meade claims that he notified Wal-Mart of his absence according to its policies. At the hearing, Wal-Mart presented evidence that Meade simply stopped showing up for work. Dettmer testified that Meade did not call in to work on July 5 or 6, and that he never returned to work after July 6. On his unemployment benefits application, Meade claimed that he was discharged on July 7 for “[a]ttendance I guess.” Dettmer testified, however, that she was unaware of any discussion between Meade and management on July 7, and she did not know if anyone at Wal-Mart had sent him a termination letter. The judge relied on Dettmer’s testimony and determined that Meade quit because he “simply stopped showing up.” *See Skarhus*, 721 N.W.2d at 345 (“Credibility determinations are the exclusive province of the [unemployment-law judge] and will not

be disturbed on appeal.”). Substantial evidence supports the unemployment-law judge’s determination that Meade quit rather than being discharged.

Affirmed.