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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1385**

Jeffrey James Kearns,
Relator,

vs.

Cardiac Pacemakers Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 17, 2008
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 7098 07

Jeffrey James Kearns, P.O. Box 131961, Roseville, MN 55113 (pro se relator)

Cardiac Pacemakers, Inc., c/o Talx UCM Services, Inc., P.O. Box 283, St. Louis, MO 63166 (respondent employer)

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

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Collins, Judge.*

* 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UNPUBLISHED OPINION

WORKE, Judge

Relator challenges the decision by the unemployment-law judge that he was disqualified from receiving unemployment benefits because he quit without good reason caused by the employer, arguing that he had good reason because (1) his manager telephoned him daily while he was on vacation and accused him of being on an unapproved vacation; and (2) he was subject to racial discrimination. We affirm.

DECISION

This court may affirm the decision of the unemployment-law judge (ULJ), remand the case for further proceedings, or 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.

Minn. Stat. § 268.105, subd. 7(d) (2006). Findings of fact are viewed in the light most favorable to the ULJ's decision, and deference is given to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an individual quit employment and the reason the individual quit are questions of fact for the factfinder to determine. *Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380,

382 (Minn. App. 1986). Whether an employee has good reason to quit is a question of law this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

On February 12, 2007, relator Jeffrey James Kearns called in sick to respondent Cardiac Pacemakers, Inc. Relator was not sick but knew that he would not be approved for a vacation day because two other employees were already on vacation that day. The next day relator did not call in or report to work. Relator had noted in the vacation book that he intended to take vacation from February 13 to March 7, but his vacation request had not been approved and he did not have sufficient vacation time to cover beyond February 28. On February 21, a manager called relator and advised him that he was off work without approval and inquired whether relator intended to return to work. Relator informed the manager that he intended to quit after February 28 to take advantage of a separation package being offered by Cardiac. Per the manager's instructions, relator submitted a resignation letter, which was accepted on March 1, 2007.

Relator established a benefit account with respondent Department of Employment and Economic Development (DEED), and it filed a determination of nondisqualification finding that relator was discharged for a reason that did not rise to the level of employment misconduct. The employer appealed. Following a hearing, the ULJ determined that relator quit and that he could have returned to work without being terminated after he was advised by the manager that he was on an unapproved vacation. Further, the ULJ found that the evidence did not sustain relator's claims that he was harassed or treated unfairly or unreasonably by management. Therefore, the ULJ

concluded, because there was no legally sufficient reason constituting a good reason caused by the employer to quit, relator was disqualified from receiving unemployment benefits. Relator requested reconsideration of the ULJ's decision, and the ULJ affirmed the findings and decision.

An applicant who quit employment shall be disqualified from all unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2006). An exception to disqualification applies when "the applicant quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1). "What constitutes good reason caused by the employer is defined exclusively by statute." *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003); Minn. Stat. § 268.095, subd. 3(g) (2006) (providing that statutory definition is exclusive and that no other definition shall apply).

A good reason caused by the employer for quitting is 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.

Minn. Stat. § 268.095, subd. 3(a) (2006). "[T]here must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). The reasonable-worker standard is objective and is applied to the average person rather than the supersensitive. *Id.*

The evidence is insufficient to support relator's argument that he quit his employment because of a good reason caused by the employer. Relator first argues that

he was forced to resign or face termination. Relator concedes, however, that he resigned and that continuing work would have been available to him if he had returned to work. The manager also testified that relator would not have been disciplined or terminated for taking an unauthorized vacation and that continuing work would have been available to relator if he had returned to work. The manager testified that he did inform relator that he would be discharged if he continued to miss work without approval. Quitting in anticipation of future discharge does not constitute good reason caused by the employer to quit. Minn. Stat. § 268.095, subd. 3(e) (2006).

Relator also argues that he had a good reason caused by the employer to quit because he was racially discriminated against by his lead workers who were of African descent. During his conversation with the manager on February 21, relator did not state that one of the reasons he was quitting was due to racial discrimination or harassment, and relator testified that it was not one of the primary reasons for his resignation. Relator also never reported any discrimination or harassment to human resources or upper management; therefore, Cardiac was never provided with an opportunity to address relator's claims. *See* Minn. Stat. § 268.095, subd. 3(c) (2006) (providing that if the applicant was subject to adverse working conditions, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse conditions before it will constitute good reason to quit). The record does not support the argument that relator was subjected to discrimination and harassment that would compel an average, reasonable person to quit. Because there was no legally sufficient reason

constituting a good reason caused by the employer to quit, the ULJ did not err in determining that relator was disqualified from receiving unemployment benefits.

Affirmed.