STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0541

Barry M. Ryter,
Relator,

vs.

Tessier's Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 3, 2009
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 77453-4

Barry M. Ryter, 1847 16 1/2 Street N.W., Rochester, MN 55901 (pro se relator)

Tessier's, Inc., P.O. Box 1200, Mitchell, SD 57301 (respondent)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he quit his employment without good reason caused by his employer and is ineligible for unemployment benefits, arguing that he had good reason to quit and witnesses to support his contention. We affirm.

D E C I S I O N

This court may affirm the decision of the 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) (Supp. 2007). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

The ULJ found that relator Barry M. Ryter was ineligible to receive unemployment benefits because he quit his employment with respondent Tessier's Inc. without a good reason caused by the employer. "An applicant who quit employment is ineligible for all unemployment benefits" unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2007). An applicant who quit employment is not ineligible for unemployment benefits if the applicant quit "because of a good reason caused by the employer." *Id.*, subd. 1(1). A "good reason" is a reason that "(1) [] is directly related to the employment and for which the employer is responsible; (2) [] is adverse to the worker; and (3) [] would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (Supp. 2007). "[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 determination that an employee quit without good reason [caused by] the employer is a legal conclusion," which we review de novo. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Relator argues that a combination of a lack of communication and poor worksite conditions created a good reason to quit his employment. The record shows that relator encountered several problems at the worksite. However, these problems did not constitute a good reason to quit caused by the employer. First, after relator complained, his employer attempted to discuss the perceived problems with him, but relator refused to

participate in any discussions. While an adverse working condition may constitute a good reason caused by the employer, an employee "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(c) (Supp. 2007). Second, relator felt that the site foreman did not have enough experience to properly oversee the project and was frustrated because he was not made the site foreman. But a good reason to quit caused by the employer "does not encompass situations whe[n] an employee experiences irreconcilable differences with others at work or whe[n] the employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). Because the ULJ's findings are supported by the record, the ULJ's legal conclusion that relator quit without good reason caused by the employer is not in error.

Relator also argues that the ULJ erred by failing to hear evidence from witnesses who would have provided evidence to establish good reason to quit caused by the employer. But the ULJ's order states that "[t]he records of [DEED] show that [relator] did not request that any witnesses be called prior to the hearing." And the record shows no evidence that relator ever requested a subpoena to compel the attendance of any witnesses, or informed anyone that witnesses were necessary. During the hearing, relator had numerous opportunities to request that witness testimony supplement the record. But the only mention of witnesses comes near the end of the hearing after the ULJ asked relator if there were any other new facts he wanted to state. Relator responded only: "If we'd call the other witnesses, I spoke with the electrician working these problems out and

the sheet metal side goes hand in hand with the refrigeration piping." Therefore, relator was given ample opportunity to raise issues and present evidence, but he failed to notify the ULJ that he wanted access to additional evidence or witnesses. Because there is no evidence in the record that witnesses had been subpoenaed or requested, the ULJ did not err by failing to hear testimony from witnesses.

Finally, relator argues that the ULJ erred by failing to order an additional evidentiary hearing to reconsider the decision. "This court will defer to the ULJ's decision not to hold an additional hearing." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). The ULJ's order states that "[t]here is no evidence to show that further witnesses would change the outcome in this case." Upon a request for reconsideration relator can request an additional evidentiary hearing, and the ULJ must order an additional hearing upon a showing that evidence that was not submitted at the initial hearing "would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence." Minn. Stat. § 268.105, subd. 2(a), (c)(1) (Supp. 2007). Relator fails to demonstrate that the outcome would be different if additional witnesses were allowed to testify. Relator did not name the witnesses or state what these witnesses would testify to. Assumedly, the witnesses would testify to the work conditions, but problems at the worksite were already in evidence and noted by the ULJ. The ULJ has the authority to exclude evidence that would be "irrelevant, immaterial, or unduly cumulative or repetitious." Minn. R. 3310.2914, subp. 1 (2007). Because there is no evidence suggesting that the outcome would be different

had relator's witnesses testified, the ULJ did not err by not ordering another evidentiary hearing.

Affirmed.