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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1442**

John N. Burgraff,
Relator,

vs.

Pro Print Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed July 21, 2009
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 20872068-3

John N. Burgraff, 1908 East Fourth Street, Superior, Wisconsin, 54880-3516 (pro se relator)

Pro Print Inc., 3920 Airpark Boulevard, Duluth, Minnesota 55811-5514 (respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, Minnesota 55101-1351 (for respondent Department)

Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Relator brings a certiorari appeal to challenge the decision by the ULJ that relator is ineligible to receive unemployment benefits because he was discharged for misconduct or, in the alternative, that he quit without good reason caused by the employer. We affirm.

FACTS

Relator John R. Burgraff was employed as a graphic designer for respondent Pro Print, a commercial printer, from 1998 to May 9, 2008. He had a history of tardiness and absenteeism at work and had received a warning that additional instances would lead to disciplinary action, up to and including termination.

On May 6, 2008, relator, whose cars had broken down and who could not afford to fix them, had arranged for a ride to work, but the ride fell through. Relator did not call in to work to explain his absence, and he made no attempt to arrange for either short-term or long-term alternate transportation. Although management and co-workers repeatedly attempted to communicate with him for several days, he did not return their calls or messages. As of May 9, 2008, the employer determined that it could no longer hold the position open for him.

Relator sought unemployment benefits and was deemed ineligible. He appealed, and a hearing was held. The ULJ ruled that if the circumstances showed that the employer discharged relator, it was for misconduct; and if relator's conduct was deemed a quit, relator did not have good cause attributable to the employer to quit. The ULJ

concluded that in either event, relator was not eligible for unemployment benefits. Relator sought reconsideration, and the ULJ affirmed. Relator brought this certiorari appeal.

DECISION

This court may affirm, remand, reverse, or modify the decision of a ULJ if the substantial rights of relator were prejudiced because the findings, conclusion, or decision were affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008).

I

Whether an employee has engaged in employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Findings of fact are viewed in the light most favorable to the ULJ's decision and are upheld if supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the particular acts constitute employment misconduct is a question of law reviewed de novo. *Schmidgall*, 644 N.W.2d at 804.

Employment misconduct is defined as

any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average

reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Minn. Stat. § 268.095, subd. 6(a) (Supp. 2007). An employee who is discharged for misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007).

The ULJ ruled that the employer had a reasonable expectation that relator would arrive on time for work, work as scheduled, and advise his employer of his absences in a timely and appropriate manner. The ULJ found that when relator stopped going to work on May 6 and admittedly failed to make any further effort to communicate or retain his job, he was discharged for employment misconduct.

Relator cites the second paragraph of subdivision 6(a), asserting that his actions fell within the description of conduct that did not constitute misconduct. *Id.* Although he acknowledges that he did not contact the employer after his ride failed to show up, he contends that he did not report to work that day due to circumstances beyond his control, which should not constitute misconduct.

“[T]ransportation is generally considered the problem of an employee.” *Deering v. Unitog Rental Servs.*, 381 N.W.2d 486, 487 (Minn. App. 1986). The ULJ found that although public transportation was available, relator did not believe he could afford it, and he made no attempt to arrange for alternate transportation, either short- or long-term. The ULJ concluded that while relator attempted to couch his transportation problems as somehow beyond his control, “the long-term lack of suitable transportation in this case

was not caused by some act of nature or other truly unavoidable circumstances”; instead, the ULJ found that relator’s life circumstances were of his own doing. These findings are supported by substantial evidence, and relator has not shown that they should be reversed.

An employer may establish and enforce reasonable rules governing employee absences, and refusal to abide by these policies generally constitutes misconduct. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). We agree with the ULJ that where relator never reported back to work on or after May 6 and failed to contact the employer to explain his absence, he engaged in employment misconduct.

II

The ULJ ruled, in the alternative, that relator quit without good reason caused by the employer. The reason that an employee quits is a question of fact that will be upheld if there is substantial evidence in the record to support the finding. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Whether the reason constitutes good cause as a matter of law is reviewed de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

An employee who voluntarily quits employment is ineligible for unemployment benefits unless “the applicant quit the employment because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007). A good reason to quit is one that is “directly related to the employment and for which the employer is responsible,” adverse to the worker, and significant enough to “compel an average,

reasonable worker to quit and become unemployed rather than remaining in the employment.” Minn. Stat. § 268.095, subd. 3(a) (Supp. 2007).

Here, the ULJ found that the evidence did not demonstrate that the employer subjected relator to any adverse working conditions or was otherwise the cause of his transportation and financial problems. Relator asserts that he interpreted a warning and statements by the employer to mean that he would be discharged for the next instance of tardiness or absenteeism. But quitting based on an instance of misconduct or notification of possible future discharge does not provide good reason to quit under the statute. Minn. Stat. § 268.095, subd. 3(d), (e) (Supp. 2007). The ULJ’s decision that relator did not have good reason to quit caused by the employer was correct.

Affirmed.