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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2215**

Doug Daniels,
Relator,

vs.

SuperValu Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 18, 2009
Affirmed
Harten, Judge***

Department of Employment and Economic Development
Agency File No. 21067231-3

Doug Daniels, 2581 14th Avenue East, North St. Paul, MN 55109 (pro se relator)

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

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

Considered and decided by Klaphake, Presiding Judge; Stauber, Judge; and
Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HARTEN, Judge

Relator, pro se, challenges the conclusion of the unemployment law judge (ULJ) that relator was discharged without a good reason caused by his employer. Because that conclusion is based on findings that have the requisite evidentiary support, we affirm.

FACTS

In July 1994, relator Doug Daniels began hourly-wage work for respondent SuperValu on the night shift at a warehouse that operated 24 hours a day, 7 days a week. In 1996, relator left the bargaining unit and transferred to a salaried, supervisor position, in which he worked the afternoon shift. In 1998, he transferred to the day shift. By 2008, relator was earning about \$64,000 annually.

In May 2008, SuperValu closed one building and consolidated personnel at the facility where relator worked. Relator was informed that he would continue to perform the same duties but he would be transferred to the night shift.

Relator worked the night shift for a few weeks before he resigned in June 2008. In July 2008, a departmental adjudicator informed relator that he was eligible for unemployment benefits. SuperValu appealed this determination. After a telephone hearing, a ULJ found that relator had resigned for personal reasons, not reasons caused by SuperValu, and had been overpaid \$4,842. Relator requested reconsideration; the ULJ's previous decision was affirmed. On certiorari appeal, relator challenges the determination that he quit without good reason attributable to SuperValu.

DECISION

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) (2008). “The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

The ULJ found that: “After several weeks [relator] informed his supervisor that he couldn’t make the night shift work for his family’s schedule and he was turning in his resignation.” The transcript provides the requisite evidentiary support. Relator testified:

[M]y wife works full time. She works late at night two nights a week. She doesn’t get home until after 11. My house has been broken into. I’ve got a 12 and a 15 year old child at home. I tried . . . the [night] shift for almost 60 days. I gave it a shot, but I simply was not . . . meeting my family obligations. It was not working . . . and I had a decision to make. And I chose . . . what was best for my family.

The ULJ found that “[w]e have no evidence to suggest that [relator] was singled out for any improper treatment, the facility was 24 hours, and [relator] knew this from the beginning.” Relator testified that he began at SuperValu on the night shift. When asked if he had been guaranteed any particular hours when he became a supervisor, relator answered, “No, sir. There really was no discussion.”

The ULJ also found that “[d]uring testimony [relator] indicated that there was no physical health reason or violation of policy by the employer, but that he needed to resign

for his family circumstances.” Again, relator’s testimony supports the finding. When asked if any health factor caused him to have problems on the night shift, relator answered, “Physically, no. . . . Actually physically doing the job, no.” When asked if any contract or policy had been violated by his move to the night shift, relator said, “No, sir. I can’t say that there was any company policy violated.”

In addition, SuperValu’s human resources generalist (HRG) testified that, at the facility where relator was employed, “we have approximately 53 supervisors on staff. We are a 24/7 operation and . . . all of [our supervisors’] schedules change on a somewhat regular basis. We’ve got people working for 2nd [afternoon] and 3rd [night] shift with all different tenures. So . . . relator’s move was something that happens to all of our supervisors.” Thus, relator was not unfairly singled out for reassignment to the night shift.

Relator opined that supervisors with less seniority should be trained to work the night shift so that those with greater seniority, like himself, could work their preferred shifts. But, in response to his question as to why this idea was not being implemented, the HRG testified, “[O]ur scheduling of our shifts is not done based on tenure. The scheduling is done based on ability and business needed. Your tenure does not dictate what shift and schedule you go into.” Relator corroborated this by testifying that he was told that “it was best for the business” when he asked for the reason for his reassignment to the night shift.

Relator’s implicit if not explicit argument is that, by merely changing an employee’s hours of work, an employer provides “a good reason caused by the employer

for quitting.” Minn. Stat. § 268.095, subd. 3(a). This court has rejected that argument. *See Markert v. Nat’l Car Rental*, 349 N.W.2d 859, 861 (Minn. App. 1984) (upholding decision that employee was disqualified from unemployment benefits where employee “submitted a resignation because he was dissatisfied with his work shift assignment” and “[t]he work shift change was not a health hazard . . . but was merely inconvenient to [the employee]”).¹

In the circumstances presented, we believe that an average, reasonable worker would not have quit and become unemployed rather than remain working the night shift. *See* Minn. Stat. § 268.095, subd. 3(a). As the ULJ concluded, relator had “a valid personal reason to quit, but [it] cannot be considered a good reason which [was] caused by the employer.”

Affirmed.

¹When a shift change has been found to be “a good reason caused by the employer” within the meaning of Minn. Stat. § 268.095, subd. 3(a), it has been accompanied by either a decrease in wages, *see, e.g., Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418-19 (Minn. App. 2003) (concluding that employee who was offered a position with a wage reduction and a different shift that included weekend work had good reason caused by the employer to quit), or a violation of a promised schedule, *see, e.g., Krantz v. Loxtercamp Transp., Inc.*, 410 N.W.2d 24, 26-27 (Minn. App. 1987) (finding good cause for quitting when truck driver quit after telling employer he would work only the schedule promised to him when he was hired); *Baker v. Fanny Farmer Candy Shops No. 154*, 394 N.W.2d 564, 567 (Minn. App. 1986) (finding salesperson, who had been hired with specific understanding that she would not have to work night shift, had good cause to quit when she was transferred to night shift).