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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1964**

Jeff Winkler,  
Relator,

vs.

Target Corporation,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 15, 2009  
Affirmed  
Minge, Judge**

Department of Employment and Economic Development  
File No. 21141744-3

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

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\* 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## **UNPUBLISHED OPINION**

**MINGE**, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that he is ineligible to receive unemployment benefits, arguing that (1) he had good reason to quit and he is covered by the child-care exception; (2) the ULJ failed to conduct an adequate evidentiary hearing; and (3) the ULJ failed to make statutorily required credibility determinations. We affirm.

### **FACTS**

In August 2007, relator Jeff Winkler began working for respondent Target Corporation (employer) at its store in North St. Paul. Relator worked the night shift. Relator's wife worked days so that they could alternate caring for their infant son. On June 2, 2008, employer informed relator that the North St. Paul store would discontinue the night shift, effective July 27, 2008. Night shift employees were given the option of changing shifts at the North St. Paul store or relocating to another store with a night shift schedule. Relator did not immediately notify employer of which option he would prefer. Relator explored affordable child-care options in response to his expected shift change. Relator testified that he located one daycare provider that would accept a child at 5 a.m. Relator testified that his life was further complicated because he had to vacate the house that he rented and he had to move to Lakeville.

On June 24, 2008, relator was placed on probation for failing to show up for a shift or to give notice of an absence. The employer's policy does not allow employees to transfer to other stores during a probationary period. In early July, relator notified

employer that he would like to transfer to another store with night shift hours because he could not work the day shift and he was moving. Relator was informed that he was ineligible to transfer due to his disciplinary action. After learning that he was ineligible to transfer, relator became upset and announced that he was quitting.

Relator applied for unemployment benefits. Respondent Department of Employment and Economic Development (DEED) denied relator's claim. Relator appealed, an evidentiary hearing was held, the ULJ determined that relator quit and was not eligible for benefits, and relator's request for reconsideration was denied. This certiorari appeal follows.

## **DECISION**

We will reverse the ULJ's decision if it is unsupported by substantial evidence or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2008). "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." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether a person is ineligible to receive unemployment benefits presents a question of law, which we review de novo. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

### *Good reason caused by employer*

Relator argues that he had good reason to quit and that his one incident of misconduct should not disqualify him from receiving unemployment benefits. Realtor also argues that the ULJ erred in determining that relator had the burden of proving the

absence of employee misconduct. The legislature has deemed that there is no burden of proof in unemployment-benefit cases. Minn. Stat. § 268.105, subd. 1(b) (2008).

“An applicant who quit employment is ineligible for all unemployment benefits” unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2008). If an employee “quit the employment because of a good reason caused by the employer,” the employee is eligible for unemployment benefits. *Id.*, subd. 1(1). “A good reason caused by the employer” is defined as 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) (2008).

What constitutes good reason caused by the employer is defined exclusively by statute. *Id.*, subd. 3(g) (2008). The law states that an average, reasonable worker has good reason to quit when faced with adverse working conditions caused by the employer. *Id.*, subd. 3(c) (2008). But a worker faced with adverse working conditions “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.” *Id.* The rules of statutory construction state “must” is mandatory. Minn. Stat. § 645.44, subd. 15a (2008). In addition, the legislature has determined that “[a] reason for quitting employment is not considered a good reason caused by the employer . . . if the reason for quitting occurred because of the applicant’s employment misconduct.” Minn. Stat. § 268.095, subd. 3(d) (2008). In sum, an employee quitting due to adverse working conditions caused by the employer must

complain to the employer, must give the employer an opportunity to correct the adverse conditions, and the adverse condition must not have been the result of the employee's misconduct.

In *Krantz v. Loxtercamp Transp., Inc.*, this court held that relator was eligible for benefits because he had a good reason to quit when his employer changed his schedule. 410 N.W.2d 24, 27 (Minn. App. 1987). Krantz was hired and advised by his employer that he would be home on weekends; however, the nature of employer's business changed and employees were required to work some weekends. *Id.* at 25. Krantz informed employer that he wanted to work the shift he was hired for. *Id.* at 26. "Because Krantz was promised when he was hired that he would not have to work weekends, he had good cause attributable to the employer to quit." *Id.* at 27.

In *Baker v. Fanny Farmer Candy Shops, No. 154*, the employee was hired to work with the understanding that she would be required to work only days; however, the employer began requiring her to work two or three night shifts per week. 394 N.W.2d 564, 565 (Minn. App. 1986). The employee complained, but nothing changed and she eventually resigned. *Id.* Because Baker was hired with the understanding that she would not have to work nights and because, despite Baker's complaints, the employer required night shift work, this court held that she had good cause to resign. *Id.* at 566.

Here, the facts are distinguishable from *Krantz* and *Baker*. Relator testified that he was hired to work the night shift, that on June 2, 2008, he was informed that the employer would discontinue the night shift on July 27, 2008, and that at that time the employer offered him the opportunity to change shifts at the same location. Relator did not request

a transfer to another store until early July, and by that time, because of his probationary status due to two no-call/no-show incidents, relator was unable to transfer to another store. Relator did not request an exception or any other accommodations.

The ULJ found that relator was ineligible to receive unemployment benefits because he quit his employment without a good reason caused by the employer. The record supports the ULJ's determination. Relator admitted that he quit because he was unable to transfer to another store with a night shift due to his probationary status and because he was moving. Relator admitted the misconduct, which led to his probation, disqualified him from relocating. As stated above, the legislature requires an employee seeking benefits to have a good reason caused by the employer. We conclude that, although relator's quit was due to a policy of the employer, the reason that the policy applied was because relator was on probation, which condition was of his own making, and because he did not pursue an accommodation request.

*Child-care exception*

Relator also argues that he quit under another exception to the general rule that an applicant who quits employment is not eligible for benefits. Minn. Stat. § 268.095, subd. 1. He claims that he quit because he was unable to find child care for his son and is therefore eligible for benefits. If an employee quits because "loss of child care for the applicant's minor child caused the applicant to quit the employment, provided the applicant made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation is available," the employee is eligible for unemployment benefits. *Id.*, subd. 1(8).

Relator acknowledged that he was aware of the pending shift change two months prior to its implementation. Relator testified that he and his wife shared the child-care duties by working opposite shifts and that his wife called some local daycare providers, but only one provider would accept a child at 5 a.m. That early hour was apparently based on the location of their new residence and their work hours.

An employee who quits because of the loss of child care is eligible for benefits if he “requested time off or other accommodation from the employer and no reasonable accommodation is available.” *Id.* The record does not indicate that relator either requested any time off to seek child care or any schedule change to accommodate the care of his child. Because he was not proactive as required by the statute, relator was not covered by the child-care exception.

#### *Evidentiary hearing*

Relator also argues that the ULJ failed to assist him and to properly conduct the hearing as evidence-gathering inquiry. The ULJ is to conduct the evidentiary hearing as an “evidence gathering inquiry” rather than “an adversarial proceeding” and “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b). The ULJ “must exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2007). Each party may examine witnesses, cross-examine witnesses, and offer and object to exhibits. *Id.*

Here, the ULJ did the following: (1) explained the procedure; (2) read an opening statement; (3) put witnesses under oath; (4) marked exhibits; (5) asked for objections to the exhibits; (6) entered the exhibits into the record; and (7) questioned both parties. The

parties testified and cross-examined each other. The ULJ asked if either party had any additional testimony before each party made their closing arguments. The record demonstrates that the ULJ conducted the hearing as an evidentiary hearing and allowed both parties opportunity to supplement the record. We conclude the ULJ fulfilled his or her duty to conduct a fair hearing.

*Credibility determinations*

Finally, relator argues that the ULJ failed to make statutorily required credibility findings. “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2008).

In this case, the ULJ did not make any credibility determinations. Here, the facts were not in dispute. Relator and employer agree that (1) employer gave two months advanced notice of pending schedule changes; (2) employees were given the option of changing shifts or relocating; (3) relator was disciplined for failing to call or show up for a scheduled shift; (4) relator requested a transfer; (5) transfer was denied because of the disciplinary action; and (6) relator quit. There was no claim that relator sought any shift or schedule accommodations to facilitate child care. Because the ULJ relied on direct evidence and undisputed testimony, the ULJ was not required to make credibility determinations.

**Affirmed.**

Dated: