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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2107**

Layne Eric Vale,
Relator,

vs.

Himec Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 21192185-4

Layne E. Vale, 38239 North Reynosa Drive, Queen Creek, AZ 85240 (pro se relator)

Himec, Inc., 1400 Seventh Street Northwest, Rochester, MN 55901 (respondent-employer)

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

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that because he voluntarily quit his employment without a good reason caused by his employer, he is ineligible to receive unemployment benefits. We affirm.

FACTS

Relator Layne E. Vale worked as a sheet-metal worker for respondent Himec, Inc. from 1987 until he quit on June 19, 2008. About six months before quitting, relator informed Himec that he and his wife would be buying a house in Arizona and that they might move there. About one month before relator quit, Himec moved all of its operations from Rochester to Zumbrota. At about the same time, relator's wife obtained employment in Arizona, and relator told his employer that his last day of work would be June 19, 2008.

Relator filed a claim for unemployment benefits with respondent Department of Employment and Economic Development. In response to a request for information by the department, relator stated that he gave his employer the following reason for quitting employment: "Purchased a house in az my wife has transferred to a job at mayo clinic." A department adjudicator determined that relator quit employment to relocate for personal reasons and, therefore, was ineligible for unemployment benefits.

Relator appealed, and at the evidentiary hearing before the ULJ, relator testified as follows about his reasons for quitting:

Q: Okay. So between the Rochester, where you used to work, actually that office and Zumbrota is 22 miles between those two places would you say or is it less?

A: Yeah, pretty close, pretty close.

Q: Okay. And so the main reason why you quit had nothing to do with moving to Arizona?

A: In part. The reason, that was part of it. My reason for quitting was because it was going to be a longer commute. The other part was that my wife had looked into transferring down to Arizona from Mayo Clinic and she was able to do that. And then also another contributing factor was the new managing had created kind of a hostile work environment. The shop was split, part Rochester and part metro area. So there was two different pay scales, about a \$7 [per hour] difference.

Greg Donley of Himec testified that he “was never told anything other than [relator] was moving to Arizona because his wife got a job down there.”

The ULJ found: “[T]he evidence clearly shows the real reason [relator] quit was to move to Arizona with his wife. They had purchased a home in Arizona and his spouse was able to obtain a job transfer from her employer to that area.” The ULJ also determined:

The two reasons [that relator] claimed caused him to quit, the pay differential between Rochester and metro workers and the 22 mile commute, were not adverse enough to compel an average, reasonable worker to quit and become unemployed rather than remain in the employment. . . . In addition, the record indicates that [relator] never complained to the company about either issue before quitting.

The ULJ determined that relator voluntarily quit employment without a good reason caused by his employer and, therefore, was ineligible for unemployment benefits. Relator filed a request for reconsideration. On reconsideration, the ULJ affirmed the initial decision. This certiorari appeal followed.

DECISION

This court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law," "unsupported by substantial evidence in view of the entire record as submitted," or "arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2008).

Subject to certain exceptions, applicants who quit employment are ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2008). One of these exceptions is when an applicant quits for a good reason caused by his or her employer. *Id.*, subd. 1(1).

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.

. . .

If an applicant was subjected to adverse working conditions by the employer, the applicant 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(a), (c) (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. 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 reason an individual quit employment is a fact question for the ULJ to determine. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Substantial evidence supports the ULJ’s finding that “the real reason [relator] quit was to move to Arizona with his wife” because “[t]hey had purchased a home in Arizona and his spouse was able to obtain a job transfer from her employer to that area.” That evidence includes the reason provided by relator in response to the department’s request for information and the testimony of relator and Donley at the hearing before the ULJ. Even if relator also quit because of the 22-mile commute and the pay differential between Rochester and metro workers, the record indicates that he did not complain to the employer about these working conditions. The ULJ did not err in determining that relator did not quit employment for a good reason caused by the employer.

On appeal, relator argues that Himec and the Zumbrota employer were two different entities and that even if he did not have a good reason for quitting his employment with Himec, he had a good reason for quitting his employment with the Zumbrota employer because he was not qualified to perform the work required there. Because relator has raised these issues for the first time on appeal, we will not consider

them. *See Imprint Techs., Inc. v. Comm’r of Econ. Sec.*, 535 N.W.2d 372, 378 (Minn. App. 1995) (appellate court will not entertain argument made for first time on appeal).

Affirmed.