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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0180**

Alan Benson,
Relator,

vs.

Granite City Jobbing Co Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 6, 2009
Affirmed
Ross, Judge**

Department of Employment and Economic Development
Agency File No. 21275737-3

Alan Benson, 824 32nd Avenue North, St. Cloud, MN 56303 (pro se relator)

Granite City Jobbing Company Inc., 2731 Clearwater Road, St. Cloud, MN 56301
(respondent employer)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Relator Alan Benson challenges an unemployment law judge's decision that he quit his employment rather than being discharged and that he was therefore ineligible to receive unemployment benefits. Because substantial evidence supports the unemployment law judge's determination that Benson quit his employment, we affirm.

FACTS

Alan Benson began working for respondent Granite City Jobbing Co., Inc. in 2003. Granite City sells consumer goods wholesale to retailers, including convenience stores and bars. Benson's responsibilities related to inventory and delivery.

Benson was scheduled to work every weekday and one Saturday per month, including Saturday, September 20, 2008. But the previous evening, Benson learned that his mother, who was receiving treatment for cancer, needed assistance and that he "needed to drive her to a few places." According to Benson, this assistance required him "not to be working that day." Benson did not report for work on Saturday morning, and he testified that he had called his employer twice between 8:00 and 8:26 a.m. but could not leave a voicemail message because Granite City did not have an answering machine. Granite City president Mike Smith testified, however, that Granite City had an answering machine and that Benson simply left no message. At approximately 8:26 a.m., Smith called Benson, and Benson told Smith that he needed the day off to help his mother.

The following Monday, Benson reported for work as scheduled, and his supervisor asked him what he had done to make Smith so angry. Benson replied that Smith had

nothing to be upset about. Benson spoke so loudly that Smith, who was standing approximately 20 feet away, heard him. Smith approached Benson. A discussion between the two followed, and Smith testified that at the end of that discussion he told Benson, “[Y]ou’re going to have to leave and you can come back when your attitude changes, take the rest of the day off.” But Benson testified that Smith “just told [him] to leave” and that if Benson’s attitude changed he might be allowed back. Benson left the workplace.

Benson did not report to work on Tuesday as scheduled. Indeed, he never again reported to work. Rather, he applied for unemployment benefits, claiming that Granite City had discharged him from his job. Smith testified that on Friday he received notice of Benson’s unemployment application. Soon afterward, Benson called Smith and inquired about the status of his job. Smith, who testified that he no longer considered Benson an employee after receiving notice of Benson’s application for unemployment benefits, told Benson that he had no comment.

The Department of Employment and Economic Development (DEED) made an initial determination that Benson quit his employment with Granite City without a good reason caused by his employer and that he was therefore ineligible for unemployment benefits. Benson appealed to an unemployment law judge (ULJ), arguing that he did not quit his job but was discharged. Benson and Smith testified at a hearing before the ULJ, and the ULJ repeatedly asked Benson about the nature of the assistance that his mother needed on Saturday, September 20. Benson refused to specify where he took his mother, stating only that it was a “personal [matter]” and asserting that it was “technically” an

emergency. When the ULJ asked Benson if his mother needed him to drive her to medical appointments, Benson questioned the relevance and stated that “she had some things [Benson] had to help her with. That’s it.”

After the hearing, the ULJ affirmed DEED’s determination that Benson was ineligible for unemployment benefits, finding that Benson quit his employment and did not fit within any exceptions to ineligibility. This certiorari appeal follows.

D E C I S I O N

Benson argues that he is entitled to unemployment benefits, claiming that he was discharged and that he did not quit. He concedes that he failed to return to his job after September 22, but he argues that he did so because he thought Smith had discharged him.

Whether an employee quit or was discharged is a question of fact for the ULJ. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). This court may remand, reverse, or modify the decision of a ULJ if the substantial rights of the relator may have been prejudiced because the findings, conclusion, or decision is, among other things, unsupported by substantial evidence or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(5), (6) (2008). We review findings of fact in the light most favorable to the ULJ’s decision, give deference to the ULJ’s credibility determinations, and rely on the ULJ’s findings when the evidence substantially supports them. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee quits his job “when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2008). Conversely, an employee is discharged “when any words or actions by an employer

would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” Minn. Stat. § 268.095, subd. 5(a) (2008). The ULJ found Smith’s testimony more credible than Benson’s. Smith testified that he told Benson to “take the rest of the day off.” Although Smith also testified that he told Benson to return “when his attitude changed,” Smith’s directive that Benson “take the rest of the day off” could reasonably be interpreted to imply that Smith expected Benson to correct his demeanor and return to work the next day. This plausible construction supports the ULJ’s finding that Smith’s words would not have led a reasonable employee to believe that Benson would no longer be allowed to work at Granite City.

The record supports the underlying factual premise that Smith sent Benson home only temporarily because of Benson’s behavior. Benson chose to treat his employment as having ended, evidenced by his failure to return to work and his application for unemployment benefits. He chose not to contact his employer until after he filed his application for benefits. The record substantially supports the ULJ’s finding that Benson’s decision to leave his employment was his own. Giving deference to the ULJ’s credibility determinations and considering the ULJ’s factual findings in the light most favorable to the decision, *Skarhus*, 721 N.W.2d at 344, we have no basis to disregard this finding. We therefore affirm the ULJ’s decision.

Affirmed.