STATE OF MINNESOTA
IN COURT OF APPEALS
A09-832

Robert Lee,
Relator,

vs.

Hirsch International Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 16, 2010
Affirmed
Toussaint, Chief Judge

Department of Employment and Economic Development
File No. 21086781-5

Robert W. Lee, Minneapolis, Minnesota (pro se relator)

Hirsch International Corp., Hauppauge, New York (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Huspeni, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Relator Robert Lee challenges the finding of the unemployment-law judge (ULJ) that he voluntarily quit his job and is therefore ineligible for unemployment benefits. Because evidence sustains the ULJ's finding, we affirm.

D E C I S I O N

Whether an employee voluntarily quit is question of fact for the ULJ. *Hayes v. K-Mart Corp*., 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). This court will not disturb a ULJ's findings if evidence substantially sustains them. *Peterson v. Nw. Airlines Inc*., 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). The evidence substantially sustains the ULJ's finding that relator quit his employment.

The record includes three e-mail messages sent by relator's employer, respondent Hirsch International Corp., concerning relator's plan to train his son to take over relator's job as a sales representative for the employer when relator retired. An e-mail that relator received on December 16, 2007, said that, if relator's son wanted the job, relator would stay through the first quarter of 2008, when relator's son would take over. The next day, another e-mail asked relator to "please give . . . yours and [your son]'s final decision so we know how to approach 2008 with the sales and budget." A third message an hour later said relator's son "is to take over the MN territory full time as of April 1st 2008. This has been agreed upon by both [relator's son] and [relator]." The record also includes a "voluntary resignation acceptance form" of employer that bears relator's

signature followed by "as of 3/31/08."

Relator was initially denied benefits based on the determination that he had quit his job, and he appealed. At the telephone hearing, the employer relied exclusively on the voluntary resignation acceptance form. But relator testified that the signature on the voluntary resignation acceptance form was not his, that he had been fired because of his age, and that "[his] employment was terminated by [the employer] against [his] wishes." The ULJ relied on this testimony to determine that relator was eligible for benefits because he had been discharged, and relator was paid $15,872 in benefits.

The employer requested reconsideration, stating that it had documents on which relator's signature matched that on the voluntary resignation acceptance form and e-mail messages in which relator had communicated his intention of resigning and being replaced by his son. The ULJ granted the request, and another telephone hearing was scheduled. At that hearing, the ULJ asked relator how, in light of his earlier testimony that he had not retired, he explained the e-mails. Relator said he had initially agreed to retire but had rescinded his agreement in another e-mail. But, unless an employer agrees that a notice of quitting may be withdrawn, an employee who seeks to withdraw that notice is considered to have quit. Minn. Stat. § 268.095, subd. 2(c) (2008). Relator could not produce the e-mail, and representatives of the employer testified that no one at the employer ever saw it, much less agreed to it.

The ULJ found that the e-mail messages directly contradicted relator's testimony at the first hearing, that "[b]ased on [relator's] contradictory testimony, [the employer's] testimony that [relator] had approached them regarding retiring and his son taking over is

given greater weight." "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc*., 721 N.W.2d 340, 345 (Minn. App. 2006). Based on the employer's testimony, the ULJ found that, if relator had attempted to withdraw his notice of quitting, the employer had not accepted the withdrawal. The ULJ also found that, despite relator's continuing repudiation of the signature on the voluntary resignation acceptance form, the preponderance of the evidence indicated that he did sign it. The ULJ concluded that realtor was not entitled to benefits and had been overpaid $15,872.

In his brief, relator reiterates his argument that he was fired because of his age. But the record refutes this argument: the supervisor testified that his comment "in no way, shape, or form had anything to do with age." The record similarly refutes relator's argument that another supervisor told relator he would discuss relator's resignation with management: that supervisor told the ULJ that no such conversation occurred. Finally, the record provides no support for relator's argument that his signature on the voluntary resignation acceptance form had to be notarized.

The evidence sustains the ULJ's findings that relator had quit his job and that the employer had not accepted relator's alleged withdrawal of his notice of quitting.

Affirmed.