**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1128**

Robert Bros,
Relator,

vs.

Jennie-O Turkey Store Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 16, 2010**
**Affirmed**
**Kalitowski, Judge**

Department of Employment and Economic Development
File No. 22050402-3

Robert Bros, Ankeny, Iowa (pro se relator)

Jennie-O Turkey Store Inc., Willmar, Minnesota (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; Kalitowski, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

**KALITOWSKI**, Judge

Relator Robert Bros challenges the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he quit his job at respondent Jennie-O Turkey Store Inc. Because the ULJ's finding that relator quit is supported by substantial evidence, we affirm.

## D E C I S I O N

"Whether an employee voluntarily quit is a 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). "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). An employee has quit employment if "the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (2008).

The handbook respondent provided to its employees stated that "[t]hree (3) consecutive scheduled working days absent, without required notice to the supervisor, will be considered a voluntary termination." Relator was absent from work without notifying his supervisor on February 18, 19, and 20, 2009. Respondent considered this absence to be a quit.

Relator applied for unemployment benefits and was found ineligible. He appealed. During the telephone hearing, he testified that: (1) during the past year, he had been absent nine times for medical reasons; (2) respondent had a policy that a tenth

absence would result in termination; (3) after relator's ninth absence, on January 10, 2009, he had been warned his tenth absence could result in discharge; (4) on February 17, 2009, he notified his supervisor that he could not obtain childcare and would not be at work; (5) no one told him he was discharged; and (6) he assumed he had been discharged and did not contact respondent or go to work on February 18, 19, and 20.

Relator's testimony provided substantial evidence to support the ULJ's findings that:

> given the fact that [relator's] last absence [on February 17] was over a month after the final warning was issued [on January 10], it was not reasonable for him to assume he was discharged. . . . [H]e should have, at the very least, called to speak with his supervisor the following day to inquire about whether or not he was discharged. A reasonable person in these circumstances would have followed up by making some inquiry. Thus, this is a quit.

Relator chose to be absent for three days without notifying his supervisor, a course of activity respondent had said it considered a voluntary quit. Thus, relator made the decision to end his employment. And because respondent neither said nor did anything to indicate to relator that he had been terminated, the end of his employment was not a discharge. *See* Minn. Stat. § 268.095, subd. 5 (2008) (defining discharge as occurring "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").

Finally, in response to relator's request for reconsideration, the ULJ properly determined that the finding that relator quit his employment and the conclusion that he is ineligible for benefits are "factually and legally correct."

**Affirmed.**