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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1200**

Raul Salazar,
Relator,

vs.

Medallion Cabinetry Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 13, 2010
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 21996952-3

Raul Salazar (pro se relator)

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

Medallion Cabinetry Inc. (respondent)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This unemployment benefits dispute arises from an employee's decision to participate in his employer's voluntary layoff program but then to decline to return to work when recalled less than two months later. Raul Salazar brings this certiorari appeal of an unemployment law judge's decision that he was ineligible to receive unemployment benefits. The unemployment law judge incorrectly determined that Salazar quit employment when he volunteered to be laid off. But Salazar did later quit employment when he declined the opportunity to return to work, and the unemployment law judge's determination that Salazar became ineligible for unemployment benefits when he accepted the voluntary layoff was correct. We affirm.

FACTS

Raul Salazar worked at Medallion Cabinetry for almost eight years until December 2008, when Medallion asked workers to accept a voluntary layoff due to reduced business. Medallion expected the layoffs to last until March 2009 and told employees that those who did not volunteer for the layoff would likely have their hours reduced to approximately 24 per week. Salazar understood that he had the option of staying employed, but he volunteered for the layoff on December 22 because he believed that it would be better to collect unemployment benefits than to work the reduced hours.

Salazar could no longer afford mortgage payments. In January 2009, he and his family moved to live with relatives in Texas while he searched for employment.

Medallion soon notified Salazar that it was recalling him to return to work on February 9. But Salazar replied that he had decided to stay in Texas and not to return to work.

Medallion informed respondent Department of Employment and Economic Development (DEED) that Salazar quit his employment on February 6. DEED determined that Salazar had quit employment to relocate and that he was therefore ineligible for unemployment benefits beginning the week of February 1, 2009, resulting in a \$2,010 overpayment of benefits. Salazar appealed and, following an evidentiary hearing, a ULJ determined that Salazar had actually quit employment earlier, on December 22, 2008, and that he had been ineligible to receive unemployment benefits since that time. This determination resulted in a \$3,216 overpayment of unemployment benefits. Salazar filed a request for reconsideration, and the ULJ affirmed his previous decision. Salazar appeals by certiorari.

DECISION

Salazar challenges the ULJ's determination that he became ineligible for unemployment benefits when he chose to accept a voluntary layoff rather than to work a reduced schedule. This court may reverse or modify the ULJ's decision if the substantial rights of the relator have been prejudiced because the decision is erroneous under the law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). We view the ULJ's factual findings in the light most favorable to the ULJ's decision and rely on them if they are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a relator is ineligible for unemployment benefits is a question of law "on which [an

appellate court is] free to exercise [its] independent judgment.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

DEED argues that the ULJ reached the right result but applied the wrong legal analysis. It contends that Salazar was on a voluntary leave of absence between December 22, 2008, and early February 2009, and that he quit employment on February 6, 2009. DEED requests that this court affirm the ULJ’s decision because Salazar’s choice to take a voluntary leave of absence and later not to return to employment made him ineligible for unemployment benefits during the entire period. DEED’s position is correct.

Voluntary Leave of Absence (Minn. Stat. § 268.085, subd. 13a)

The ULJ mistakenly interpreted unemployment law to provide only two ways for an individual to leave employment—a quit or a discharge. *See* Minn. Stat. § 268.095, subds. 2, 5 (2008) (defining “quit” and “discharge”). The ULJ determined that Salazar’s decision to end employment on December 22 was a “quit” within the meaning of Minnesota Statutes section 268.095. But the ULJ did not consider whether Salazar’s participation in the voluntary layoff program was a leave of absence. A leave of absence can be voluntary or involuntary. Minn. Stat. § 268.085, subd. 13a (2008). An employee on an *involuntary* leave of absence may be eligible for unemployment benefits, but an employee on a *voluntary* leave of absence is ineligible. *Id.*, subd. 13a(a). “A leave of absence is voluntary when work that the applicant can then perform is available with the applicant’s employer but the applicant chooses not to work.” *Id.* Also, “[a] voluntary

leave of absence is not considered a quit . . . from employment for purposes of section 268.095.” *Id.*, subd. 13a(c).

In *Scheeler v. Sartell Water Controls*, this court considered a similar factual scenario and determined that the applicant was ineligible for unemployment benefits. 730 N.W.2d 285, 289 (Minn. App. 2007). Scheeler’s employer offered employees a “90 day voluntary layoff” after which the employer would recall the employees. *Id.* at 287–88. Scheeler accepted the layoff and moved to Montana, and he refused to return when the employer recalled him to work. *Id.* at 287. This court held that Scheeler’s “voluntary layoff” was a “voluntary leave of absence” within the meaning of section 268.085, subdivision 13a(a). *Id.* at 288.

Salazar testified that he volunteered to be laid off on December 22 and that he understood that he had the option of staying employed. We hold that Salazar’s decision to participate in the voluntary layoff program was a voluntary leave of absence within the meaning of section 268.085 and that he was therefore ineligible to receive unemployment benefits during that period.

Quit (Minn. Stat. § 268.095, subd. 2)

We also hold that Salazar’s voluntary leave of absence ended on February 6 when he quit employment. “A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a). Salazar’s departure, which he calls his resignation, is a quit for the purposes of unemployment law because he decided to end the employment. An applicant who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095,

subd. 1 (2008). An exception to ineligibility applies when “the applicant quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason caused by the employer for quitting is a reason that directly relates to the employment and for which the employer is responsible, is adverse to the worker, and would compel an average, reasonable worker to become unemployed. *Id.*, subd. 3(a) (2008). Whether an employee had good reason to quit is a question of law reviewed de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

The ULJ considered the exception and reasonably found that “Salazar may have had excellent personal reasons for quitting employment at Medallion but he did not have a good reason caused by the employer.” But the ULJ erroneously considered whether the exception applied to Salazar’s departure on December 22. Because Salazar did not quit until February 6, the proper question is whether Salazar quit employment on February 6 because of a good reason caused by the employer. Salazar testified that he did not return to Medallion because he had relocated to Texas. Medallion did not cause Salazar’s relocation decision. Salazar quit employment on February 6 without a good reason caused by the employer, and he therefore remained ineligible to receive unemployment benefits.

Although the ULJ erred by finding that Salazar quit employment on December 22, he correctly determined that Salazar is ineligible for unemployment benefits. Salazar is ineligible because he was on a voluntary leave of absence from December 22 to February 6 and because he quit employment on February 6 without a good reason caused

by the employer. We affirm the ULJ's determination that Salazar is ineligible to receive unemployment benefits.

Affirmed.