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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1266**

Joshua Steinkraus,
Relator,

vs.

Food & Drink Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 13, 2010
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 21811916-3

Joshua C. Steinkraus, Corcoran, Minnesota (pro se relator)

Food & Drink Inc., Minneapolis, 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; Klaphake, 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.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Joshua Steinkraus challenges the conclusion of the unemployment-law judge (ULJ) that relator quit his job as a bar attendant for respondent Food & Drink, Inc., which does business as the Barfly nightclub, without a good reason caused by his employer because relator did not give his employer an opportunity to correct an adverse working condition. Because that conclusion is based on findings that have the requisite evidentiary support, we affirm.

DECISION

“The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

While working part time at Barfly, relator began another part-time job as a deliveryman for a pizza restaurant, where he had a higher hourly wage and worked more hours per week. His work schedules were complementary except on the three occasions when his manager at Barfly asked him to come in early, which meant that he had to leave his pizza-delivery job earlier. Because of this situation, he stopped going to work at Barfly.

Relator applied for benefits and was declared eligible under Minn. Stat. § 268.095, subd. 1(2) (2008) (providing that those who quit to accept other covered employment with better terms and conditions of employment are not ineligible for benefits). Food &

Drink appealed. At the hearing, relator was asked why he quit his job at Barfly. He answered that, on three occasions, he had been told “[t]o come in early and . . . I took off of work at [the pizza job and] got down there [to Barfly] to find out that I was the only one there and I wasn’t even able to start doing my work . . . [b]ecause I didn’t have access to the building.” In response to the ULJ’s questions, relator testified that he had not complained that Barfly’s schedule was affecting his other job, asked the manager for an explanation, or mentioned the problem to anyone except his co-workers. He testified that he did tell Barfly he would have to cut back the days he could work “[b]ecause I made more money at my other job, or because I got a new job, basically.”

Barfly’s current manager testified that he did the scheduling for Barfly and was never told it created problems with relator’s other job, that the manager who had told relator to come in early would have had no reason to do so and no longer worked for Barfly, and that relator did not say why he was quitting but just stopped coming to work.

After the hearing, the ULJ concluded that relator did not quit for a good reason caused by his employer because he did not complain of his adverse working conditions or give his employer an opportunity to correct them. *See* Minn. Stat. § 268.095, subd. 3(c) (2008) (providing that there is no good reason caused by employer if employer was not notified of and given opportunity to correct adverse working conditions). The ULJ also concluded that relator did not quit to accept other employment that provided substantially better terms and conditions because he continued to work part-time for Barfly after he began to work for the pizza restaurant. *See* Minn. Stat. § 268.095, subd. 1(2) (providing that one who quit to accept other employment with better terms and conditions is not

ineligible for benefits). These conclusions are supported by findings that have ample evidentiary support.¹

Affirmed.

¹ Despite his own testimony that he did not complain to Barfly's management about the scheduling problem and the manager's testimony that he did not know about the problem, relator claims on appeal that Barfly's management did know about the problem. But this claim is refuted by the "Unemployment Insurance Request for Information" on which relator said that, because he had problems with a manager and his new job paid better, he had not told Barfly why he quit. Moreover, even if relator's claim were not refuted, he is not entitled to raise it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that party may not raise new theory of case on appeal).