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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2128**

Kevin Smith,  
Relator,

vs.

QSC of Northfield Inc.,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed August 3, 2010  
Affirmed  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 22992866-4

Adam J. Dowd, Schmitz, Ophaug & Dowd, L.L.P., Northfield, Minnesota (for relator)

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Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Muehlberg, Judge.\*

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\* 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## **UNPUBLISHED OPINION**

**STAUBER, Judge**

Relator challenges the decision by the unemployment law judge (ULJ) that he was ineligible for unemployment benefits because he quit without good reason caused by the employer, after the employer sent him notice of termination of the employment contract, but inviting him to stay on as an at-will employee with the terms to be negotiated. Relator argues that the ULJ's findings that he quit rather than attempting to negotiate are unsupported by substantial evidence. Because the ULJ's findings are supported by the record, we affirm.

### **FACTS**

In December 2006, relator Kevin Smith sold his cleaning and disaster restoration business to respondent QSC of Northfield, Inc. As part of the sale, relator signed an employment agreement and covenant not to compete with QSC. Under the terms of the agreement, relator was to be employed by QSC earning a base annual salary of \$70,000 plus benefits. The agreement also provided that either party could terminate the employment agreement for any reason upon 30 days' written notice to the other party. But QSC could not alter relator's salary or employment status until after QSC completed making payments on the purchase agreement.

On April 1, 2009, prior to the end of the no-salary alternation period, QSC notified relator that his salary had been reduced to \$52,750, and that the reduction would be reflected on relator's next paycheck. Relator sent QSC a letter explaining that QSC was not allowed to change his salary while the employment contract was still active. On June

1, 2009, QSC reinstated relator's salary to \$70,000 and gave him a check for back-pay for the previous two months. QSC also provided relator with a letter that stated in part:

as you know, the business climate has been very difficult for 2009, so you are hereby notified that the Employment Agreement and Covenant Not to Compete dated December 1, 2006, will terminate as of July 1, 2009, pursuant to paragraph 5 c. You are invited to stay on as a regular employee, the terms to be negotiated.

Relator arranged to meet with QSC majority owner Danny Ayotte on June 11, 2009. At the meeting, relator told Ayotte that he "was unhappy with the situation and would not accept a return after July 1." The parties then agreed that relator would use his 12 vacation days for the remaining 12 work days between June 11 and July 1. About a week later, relator met with Ayotte again where relator asked Ayotte if he would be interested in selling a portion of the business back to him. Ayotte declined the proposition.

Relator established a benefit account with respondent Minnesota Department of Employment and Economic Development and applied for benefits. A department adjudicator initially determined that relator was eligible for unemployment benefits. QSC appealed and, following a hearing, the ULJ determined that relator was not eligible to receive benefits because he quit without good reason caused by his employer. Relator subsequently filed a request for reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

## DECISION

When reviewing the decision of a ULJ, this court may remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views the ULJ's findings in the light most favorable to the decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court also defers to the ULJ's credibility determinations and evaluations of conflicting evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Employees who quit employment are not eligible to receive unemployment benefits, except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (2008). One exception applies if the applicant quit “because of a good reason caused by the employer.” *Id.*, subd. 1(1). A “good reason” is a reason “(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*, subd. 3(a) (2008). In addition, adverse working conditions may be considered a good reason to quit only if the applicant “complain[ed] to the employer and [gave] the employer a reasonable opportunity to correct the adverse working conditions.” *Id.*, subd. 3(c) (2008); *see also Nichols*, 720 N.W.2d at 595.

Here, the ULJ found that “the reduction in salary from \$70,000 to \$52,500 would cause a reasonable person to quit.” But the ULJ also found that relator “was required to meet with the employer and voice his concerns. Instead of doing this, [relator] chose to quit.” Thus, the ULJ concluded that relator was not eligible to receive benefits because he quit without good reason caused by his employer.

Relator argues that he is entitled to benefits because “the evidence shows that [relator] both alerted QSC to his dissatisfaction with the changed terms of employment, and attempted to negotiate an acceptable alternative terms of employment to no avail.” We disagree. The record reflects that relator’s contention with the salary decrease in May 2009 was premised on QSC’s inability to cut relator’s salary under the terms of the employment agreement. After the employment agreement ended, relator was informed that the employment agreement would be terminated on July 1, 2009, but that relator was welcome to stay on as a “regular employee, the terms to be negotiated.” Relator subsequently met with Ayotte on two occasions, but relator and Ayotte agreed that the parties never discussed relator’s salary if relator chose to stay with QSC after July 1, 2009. Although relator testified that he assumed that his salary would be \$52,500 if he chose to remain employed at QSC, his assumption was never confirmed because the parties did not discuss or negotiate the prospective terms of employment if relator chose to stay at QSC. Moreover, relator’s claim that Ayotte was on notice of his unhappiness with a 25% percent salary decrease was refuted by Ayotte’s testimony that

I had no clue . . . [relator] wanted to talk about the salary change. He had . . . quit and I thought that was that, so I really didn’t think there was . . . going to be any conversation

about him coming back or anything else. . . . I had no clue that he was looking for me to ask him to come back and negotiate salary.

If believed, Ayotte's and relator's testimony that the parties did not discuss relator's salary supports the ULJ's findings that relator failed to give QSC notice and an opportunity to rectify relator's complaints about his salary. *See Nichols*, 720 N.W.2d at 594 (stating that this court defers to the ULJ's credibility determinations). Accordingly, the ULJ did not err in concluding that relator quit without good reason caused by his employer.

**Affirmed.**