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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2158**

Cyrus Fukar,
Relator,

vs.

Trend Enterprises Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent

**Filed September 7, 2010
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 23406922-3

Cyrus Fukar, Brooklyn Park, Minnesota (pro se relator)

Trend Enterprises, Inc., New Brighton, Minnesota (respondent employer)

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

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

UNPUBLISHED OPINION

ROSS, Judge

Cyrus Fukar was employed as a temporary picker packer for Trend Enterprises when he stopped coming to work. Fukar sought unemployment benefits through the Minnesota Department of Employment and Economic Development, claiming that he stopped coming to work because his supervisor told him that no more work was available. An unemployment law judge (ULJ) believed Fukar's supervisor's contrary testimony, determined that Fukar had abandoned his job, and held that Fukar was ineligible for unemployment benefits. Fukar appeals, challenging the ULJ's finding that he quit. Because we defer to the ULJ's credibility determination against Fukar and in favor of his supervisor, and because substantial evidence supports the finding that Fukar quit, we affirm.

FACTS

Cyrus Fukar worked for Trend Enterprises as a picker packer from June 30 to August 28, 2009. Trend told Fukar when he began that it was a temporary, seasonal job. It gave Fukar no specific end date but told him that the seasonal work typically ended in mid-September, coinciding with the beginning of the school year. On Thursday August 27, with his supervisor's permission, Fukar left work early to go to the doctor and to attend a job interview. He returned and worked his scheduled shift the next day. But that was the last day that Fukar worked at Trend; he did not report to work the following Monday, August 31, or any day thereafter.

Trend and Fukar provided conflicting explanations for his absence after Friday August 28. Fukar's supervisor, Jeff Flatten, testified that when Fukar did not arrive on Monday, he called Fukar, who replied that he had gotten another job. (In fact, Fukar had not gotten another job.) Flatten also testified that he told Fukar that he would file termination documents for him. Flatten and a Trend human resources representative testified that work was available through the middle of September. Fukar, on the other hand, denied that anyone called him to ask why he had not come to work. He testified that he stopped coming to work because Flatten told him there was no more work.

Fukar applied for unemployment benefits on September 8. DEED initially determined that he was eligible for benefits based on its finding that Trend had discharged him when his seasonal position ended. Trend appealed. A ULJ held a hearing and found that Fukar quit his job by abandonment, making him ineligible for unemployment benefits. The judge credited Flatten's testimony because it was more detailed and "described a more likely chain of events," and he disbelieved Fukar's testimony because it was "vague and confused." The ULJ affirmed his decision after Fukar requested reconsideration, and Fukar appeals to this court by writ of certiorari.

DECISION

Fukar challenges the ULJ's determination that he is ineligible for unemployment benefits. This court may affirm the ULJ's decision, remand for further proceedings, or reverse or modify a ULJ's decision if the relator's substantial rights were prejudiced by findings that are unsupported by substantial evidence, or by a decision that is affected by

an error of law, made upon unlawful procedure, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2008).

The focus of Fukar's challenge is the ULJ's finding that Fukar quit his job. "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). This court reviews fact findings in the light most favorable to the ULJ's decision, gives deference to the ULJ's credibility determinations, and relies on the ULJ's findings when the evidence substantially supports them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Generally, an employee who quits his job is ineligible for unemployment benefits, Minn. Stat. § 268.095, subd. 1 (Supp. 2009), but an employee who is discharged by his employer is eligible for benefits unless he is discharged for misconduct, *id.*, subd. 4 (2008). An employee is considered to have quit his job "when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (Supp. 2009). By contrast, "[a] discharge from employment occurs 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." *Id.*, subd. 5(a) (2008). Even if an employee has been notified that he will be discharged in the future, he is considered to have quit if he chooses to end the employment while any work is still available. *Id.*, subd. 2(b) (Supp. 2009).

The ULJ's finding that Fukar quit is supported by substantial evidence. Flatten testified that Fukar stopped coming to work and that Fukar was never told that no further

work was available. And both Flatten and the human resources representative testified that work was in fact available until mid-September. This testimony constitutes substantial evidence that Fukar quit because it establishes that Fukar voluntarily ended his employment while work was still available. *See* Minn. Stat. § 268.095, subd. 2(a), 2(b).

Fukar questions how he can be considered to have quit when he was told that no more work was available. His question assumes that he was, in fact, told that no more work was available. But the ULJ disbelieved Fukar's testimony of this fact because it found his version of events "vague and confused," while Flatten's testimony was detailed and described a more likely chain of events. This credibility determination is supported by the record.

Fukar testified that he went in to collect his paycheck on a Friday morning, found the warehouse empty of temporary employees, and spoke to Flatten, who told him that "the assignment was over." But Fukar did not give a plausible date of this conversation. He first cited August 31, but August 31 was a Monday, not a Friday as he had testified. Fukar later claimed that it was "the last Friday in August," or August 28. But Fukar insisted that he had not worked on the day of the conversation with Flatten, while he had worked his full shift on August 28. And he testified that he went in to pick up his paycheck, but August 28 was not a payday.

The ULJ determined that Fukar must have come in to pick up his paycheck the following Friday, September 4, a payday. Even if Fukar was told on September 4 that no more work was available, this fact would not explain why he stopped going to work

before that date. Fukar now claims that he stayed home sick on Monday August 31 and that Flatten called him that day and told him no more work was available. No evidence of this was presented to the ULJ, and the court will not consider it on appeal. *See* Minn. R. Civ. App. P. 110.01 (stating that documents filed in trial court constitute record on appeal). Even if the court were to accept this unsworn, after-the-fact testimony, it bolsters the ULJ's credibility determination because Fukar has changed his story—at the hearing, he claimed that no one called him to find out why he had not come to work on Monday.

Fukar questions how the ULJ could conclude that he quit his job after working only two months given that he would be denied benefits if he quit. But this is merely a credibility argument, and we defer to the ULJ's crediting of Trend's witnesses' testimony that Fukar stopped coming to work while work was available. The wisdom of Fukar's decision to stop coming to work is not relevant to the issue of whether he quit. The ULJ properly determined that Fukar quit his employment.

Good Reason Caused by Employer

An employee may be eligible for unemployment benefits if he quits his job for a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1). A “good reason caused by the employer” is a reason that is “directly related to the employment and for which the employer is responsible,” is adverse to the worker, and “would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*, subd. 3(a) (2008). The facts here do not establish that Fukar had a good reason caused by his employer for quitting.

Fukar emphasizes that his assignment was temporary and that he knew it was going to end soon. But “[n]otification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting.” *Id.*, subd. 3(e) (2008).

Scheduled Layoff Date

An employee may be eligible for benefits if he quits because his employer notifies him that he will be laid off because of a lack of work within 30 calendar days. Minn. Stat. § 268.095, subd. 1(6). The employer must provide a specified date for the layoff. *See id.* (contemplating that the layoff have a scheduled date). Fukar had not been given a specific date when his employment would end. He therefore cannot successfully invoke the scheduled-layoff exception. Because Fukar quit his employment and no exceptions apply, he is ineligible for unemployment benefits.

Affirmed.