STATE OF MINNESOTA
IN COURT OF APPEALS
A10-821

Rodney Sorgaard,
Relator,

vs.

Lester Building System, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 22, 2011
Reversed
Connolly, Judge

Department of Employment and Economic Development
File No. 24007124-3

Anne M. Loring, Minneapolis, Minnesota (for relator)

Lester Building System LLC, Lester Prairie, Minnesota (respondent)

Lee B. Nelson, Christina Altavilla, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he did not give his employer notification of adverse working conditions and an opportunity to correct them before he quit and therefore did not have good reason caused by his employer for quitting. Because the findings on which the ULJ's decision was based do not have the requisite evidentiary support, we reverse.

FACTS

Relator Rodney Sorgaard began doing construction work for respondent Lester Building System, LLC (LBS) in September 2009. On Wednesday, November 25, 2009, the day before the Thanksgiving holiday weekend, the crew to which relator was assigned was working on a roof. The brackets and cable to which the workers' safety harnesses were to be attached had not been set up. Relator complained to the crew leader about the lack of safety equipment. Instead of having the equipment installed, the crew leader replied, "We don't have time for that. This is a small building[;] let's just get it done." Relator looped a metal harness around a roof truss and connected his own safety harness to it. Later that day, another worker fell from the roof and injured himself by scraping his forehead.

On Sunday, November 29, relator telephoned the LBS regional supervisor and told him that "[he] was uncomfortable with how things were working at the job" and that he "just felt that [he] needed to quit." When the supervisor asked him why, relator replied

that "there was an incident" and referred the supervisor to the crew leader for details of what had happened on the previous Wednesday.

Following the supervisor's investigation, the crew leader was fired and the other crew members were suspended for their failures to follow safety procedures. LBS also issued a notice outlining the penalties for failure to comply with safety procedures.

Relator applied for unemployment benefits. He was initially determined to be eligible because he was working in unsafe conditions that would have caused an average reasonable worker to quit, and he complained to his employer about them. LBS challenged the determination of relator's eligibility.

After a telephone hearing, the ULJ issued a determination that relator did not have a good reason caused by LBS for quitting because he did not complain to anyone in a management position about the conditions that caused him to quit. Relator sought reconsideration, and the ULJ affirmed his previous decision.

D E C I S I O N

This court may reverse a ULJ's decision "if the substantial rights of the petitioner may have been prejudiced because the . . . conclusion . . . [is] . . . unsupported by substantial evidence in view of the entire record as submitted[.]" Minn. Stat. § 268.105, subd. 7(d) (2008). "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). "If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and

give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting . . . ." Minn. Stat. § 268.095, subd. 3(c) (2008). The ULJ's conclusion that relator did not complain about the adverse conditions or give his employer a reasonable opportunity to correct them was based on findings that lack the requisite evidentiary support and must be reversed.[1]

The ULJ found that "[relator] never complained to . . . anyone . . . in management at [LBS] regarding these [safety] issues prior to quitting. Thus, [LBS] was not given a reasonabl[e] opportunity to correct the situation." But it is undisputed that relator did complain to his crew leader, and LBS has not alleged that the crew leader would not have been able to correct the situation by installing the appropriate safety equipment. In fact, LBS indicated its belief that the crew leader had both the authority and the ability to correct the situation when it fired him for not doing so.

The crew leader was relator's "employer" within the meaning of the unemployment laws. *See Heaser v. Lerch, Bates & Assocs., Inc.*, 467 N.W.2d 833, 835 (Minn. App. 1991) (holding that employee's obligation to notify the employer of sexual harassment was satisfied when employee notified her supervisor because "the manager's knowledge [of the sexual harassment] is imputed to the employer"). *Heaser* is cited for this proposition in *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 511 (Minn.

[1] Because we reverse on the merits, we do not address relator's arguments concerning the ULJ's failure to assist him despite his status as an unrepresented party or its failure to adequately develop the factual record.

App. 1997) (holding that employee who complained of safety concerns to the office manager had no obligation to complain to the employer's owners).

> The office manager was apparently, by definition, a "manager," to whom [the employee] could justifiably complain. The record indicates that when [the employee] complained, the office manager either promised him new parts or told him that there was not a problem. This suggested that the office manager had the authority to resolve [the employee's] problems. There is no evidence to support a finding that the office manager was not the person to whom [the employee] should have complained. [One of the owners] himself stated that the office manager discussed employees' problems with the owners, which supports [the employee's] contention that employees were expected to discuss their problems with the office manager.

588 N.W.2d at 511 (citations omitted). Relator's crew leader heard and refused relator's request for installation of the appropriate safety equipment; like the officer manager in *Haskins*, the crew leader "had the authority to resolve [the employee's] problems." *See id.*

Because we conclude that relator did meet the requirements of Minn. Stat. § 268.095, subd. 3(c), by complaining to his employer about the adverse working condition and giving his employer an opportunity to correct it, we do not address whether he had an obligation to complain about an adverse working condition that was a violation of federal safety standards. *See Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn. App. 1992) (holding that, when adverse working condition was caused by employer's violation of federal trucking laws, employee "has good cause per se to quit at any time as a result of the violation" because trucking laws affect public safety).

Reversed.