STATE OF MINNESOTA
IN COURT OF APPEALS
A11-18

Sheridan Sparrow,
Relator,

vs.

Mills Auto Enterprises, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 15, 2011
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 26066145-3

Sheridan D. Sparrow, Eagan, Minnesota (pro se relator)

Mills Auto Enterprises, Inc., Brainerd, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Bjorkman, 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, arguing that he had a good reason to quit because his employer illegally deducted $1,000 from his pay to recover a portion of advertising costs. Because the deduction did not violate Minnesota law and the record substantially supports the ULJ's conclusion that relator did not quit for a good reason caused by his employer, we affirm.

FACTS

Relator worked for Mills Auto Enterprises, Inc. (MAEI) as a sales manager pursuant to a base and incentive pay plan (pay plan), under which he earned a base salary of $24,000 plus incentive payments based on sales. Section I of the pay plan provided in relevant part:

> Eligibility to receive the incentive will be based on overall performance . . . All calculations for incentive pay are made by [MAEI] Management *in its sole discretion and shall be final . . . The plan or any parts of the plan may be altered, amended, changed, discontinued or adjusted at any time by the Officers of [MAEI] for any reason on an overall basis or an individual basis, in their sole discretion.*

(Emphasis added.)

Relator received base wages on a bi-weekly basis and incentive payments on the 15th of the month after they were earned. He earned $64,493.88 in 2009 and was projected to earn $70,533.18 in 2010.

MAEI held its annual sales event in July 2010. To promote the event, MAEI spent $10,668, which was above its standard advertising budget. Despite the additional advertising, sales from the event fell below MAEI's expectations. MAEI determined that relator and four other managers lacked initiative in conducting the event and were thus responsible for its unsuccessful results. Consequently, on July 30, the MAEI vice president sent relator and the other managers a memorandum notifying them that she would be "charging each of [the managers] back $1,000.00 personally that will be taken back from each of [their] incentive checks on the 15th of August 2010 incentive payroll." MAEI deducted $1,000 from relator's paycheck on August 15. Relator resigned from MAEI on September 10, 2010 because of the payroll deduction.

Relator subsequently applied and was deemed eligible for unemployment benefits based on a determination that MAEI had made an illegal deduction from relator's paycheck in violation of Minn. Stat. § 181.79 (2010) and had therefore given relator good reason to quit. MAEI appealed the determination of eligibility to a ULJ. The ULJ held an evidentiary hearing and issued a decision reversing the determination of eligibility based on the conclusion that the deduction was legal and that relator quit without good reason caused by MAEI. The ULJ then denied relator's motion to reconsider. Relator now appeals, arguing that MAEI made an illegal deduction from his pay and he therefore had good reason to quit caused by his employer.

D E C I S I O N

In reviewing the ULJ's determination, the appellate court may affirm a ULJ's decision, remand for further proceedings, or reverse or modify the decision if the

findings, inferences, conclusions, or decision are affected by an error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010); *see also Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

An employee who quits employment is ineligible for unemployment benefits unless the employee quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2010). An employer who violates a statute "in its treatment of its employees is per se guilty of employer misconduct" and thereby "furnishes the employee with the requisite good cause for quitting." *Kahnke Bros., Inc. v. Darnall*, 346 N.W.2d 194, 196 (Minn. App. 1984); *see also Hawthorne v. Universal Studios, Inc.*, 432 N.W.2d 759, 762 (Minn. App. 1988) ("Illegal conduct by an employer may constitute good cause for an employee to quit."). Thus the initial inquiry is whether MAEI made an illegal deduction from relator's paycheck such that it created a good reason for relator to quit.

Minnesota law prevents an employer from "mak[ing] any deduction, directly or indirectly, from the wages due or earned by any employee . . . to recover . . . claimed indebtedness running from employee to employer" without the employee's authorization. Minn. Stat. § 181.79, subd. 1(a) (2010). Any agreement contrary to this section is void, with the exception that "[t]his section *shall not apply to . . . any rules* established by an employer for employees who are commissioned salespeople, *where the rules are used for*

purposes of discipline, by fine or otherwise, in cases where errors or omissions in performing their duties exist." *Id.* at subd. 1(c)(2) (2010) (emphasis added).

The ULJ determined that the deduction did not violate subdivision 1(a) based on a finding that relator's wages were not due or earned. The record substantially supports this finding. And, although the ULJ did not consider whether the exception in subdivision (1)(c)(2) applied, we conclude that it provides an alternative basis on which to affirm the ULJ's decision.

Minn. Stat. § 181.79, subd. 1(a)

Relator argues that the $1,000 deduction was a "claimed indebtedness" for advertising expenses that failed to produce satisfactory results, thus violating the prohibition against unauthorized wage deductions. MAEI, however, considered the deduction a valid reduction in incentive pay to hold relator accountable for his lack of performance during the annual sale.

In *Oja v. Dayton Hudson Corp.*, the employee alleged that the employer violated Minn. Stat. § 181.79 by reducing commissions for a portion of returned merchandise that could not be traced to an individual employee. 458 N.W.2d 169, 170 (Minn. App. 1990). The court found that the employer's policy of calculating commissions on net sales precluded the commissions from becoming due or earned until the returned merchandise was included in the calculation. *Id.* at 171. Thus the employer's deductions for unidentified returns were not illegal because the employee had not yet earned the commissions. *Id.*

Similar to the policy in *Oja*, MAEI's pay plan provides incentives based on sales. Although the pay plan specifies the method to calculate incentive pay, it also provides that such calculations are within the "sole discretion" of MAEI and that eligibility is based on overall performance. By reserving the right to adjust incentive payments at the sole discretion of management, the pay plan effectively precludes incentive payments from becoming due or earned until management has made such adjustments.

Relator argues that the July 30 memorandum proves that the deduction was a reimbursement for advertising expenses. But the memorandum references the adjustments to incentive pay allowed by the pay plan as the basis for the deduction, and management testified that the deduction from relator's incentive pay did not reflect an advertising expense. Accordingly, the record provides substantial evidence for the ULJ's factual finding that the deduction was legal and within the scope of the pay plan. *See Peterson*, 753 N.W.2d at 774 (citations omitted) ("[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them."); *Abdi v. Dep't of Employment & Econ. Dev.*, 749 N.W.2d 812, 814 (Minn. App. 2008) ("We review findings of fact in the light most favorable to the ULJ's decision and defer to the ULJ's determinations of credibility.").

Minn. Stat. § 181.79, subd. 1(c)(2)

The pay plan also falls within the exception to the wage deduction statute as a rule "established by an employer for employees who are commissioned salespeople." Minn. Stat. § 181.79, subd. 1(c)(2). By retaining the right to exercise sole discretion in calculating incentive payments and basing such payments on overall performance, the

pay plan establishes a rule for disciplinary purposes and permits deductions from commission pay where performance is lacking.

Relator argues that this exception does not apply because the deduction was not a disciplinary measure but was instead a charge for advertising. The ULJ, however, found that relator's unsatisfactory performance was the motivating factor behind the deduction. The record supports the finding that the deduction was disciplinary in nature and was a valid incentive reduction. MAEI deducted $1,000 from relator's August 15 paycheck, which was the payroll used to disburse incentive payments. The record contains nothing to suggest that relator did not receive his full bi-weekly salary check or that the deduction was intended to reduce any wages except those based on incentive. Thus, in making the deduction, MAEI was exercising its right to enforce a disciplinary rule for commissioned salespeople "where errors or omissions in performing their duties exist." *Id.*

Because the record substantially supports the ULJ's factual finding that the deduction was within the scope of the pay plan and was an appropriate deduction from incentive pay rather than a recovery of advertising expenses, the deduction did not violate Minn. Stat. § 181.79 and does not furnish a per se reason attributable to MAEI for relator to quit.

Relator may still be eligible for unemployment benefits if his reason for quitting (1) "is directly related to the employment and for which the employer is responsible"; (2) "is adverse to the worker"; and (3) "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3 (2010). Whether an employee quit for a good reason caused by the

employer is a legal conclusion that "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).

Relator argues that the $1,000 payroll deduction gave him good cause to quit.[1] A substantial wage deduction may provide an employee with a good reason for quitting. *See, e.g., Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84-85 (Minn. 1981) (26% decrease); *Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 536, 235 N.W.2d 616, 617 (1975) (25%); *McBride v. LeVasseur*, 341 N.W.2d 299, 300 (Minn. App. 1983) (30%). But when the deduction is warranted based on a valid assessment of the employee's performance, a wage reduction "may not justify a choice to quit." *See Cook v. Playworks*, 541 N.W.2d 366, 369 (Minn. App. 1996).

Here, the record reveals that the wage deduction was neither substantial nor unwarranted. MAEI deducted $1,000 from Sparrow's paycheck in 2010 where his undisputed projected salary was $70,533.18, resulting in a 1.42% decrease. The record also supports a finding that the deduction was warranted to hold relator accountable for his poor performance. The July 30 memorandum suggests that management was dissatisfied with relator's performance, and MAEI's director of administration testified to that effect on behalf of management. The director of administration presented sales figures suggesting that sales were much lower than those made the prior year during the

[1] Relator also argues that he quit because he feared further pay deductions. Because the ULJ found that the sole reason that relator quit was a result of the one-time deduction and there is insufficient evidence to support a fear of further deductions, we need not consider this reason. *See Hawthorne*, 432 N.W.2d at 762.

same sale and testified that the low sales were a result of relator's poor performance. Relator himself testified that he understood "[t]he reason [for the deduction] was a lack of initiative to make the sale successful."

Because the record shows that the deduction was not substantial and was based on a valid assessment of relator's performance, relator did not have good reason to quit attributable to his employer.

Affirmed.