STATE OF MINNESOTA
IN COURT OF APPEALS
A11-143

Leon Williams,
Relator,

vs.

TLC Special Transportation, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent

Filed August 29, 2011
Affirmed
Stauber, Judge

Department of Employment and Economic Development
File No. 26332619-3

Leon Williams, Minneapolis, Minnesota (pro se relator)

TLC Special Transportation, Inc., Burnsville, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

STAUBER, Judge

Relator challenges a decision by the unemployment law judge (ULJ) that he was ineligible for unemployment benefits because he had quit employment, arguing that (1)

the employer essentially fired relator when it suspended his contractual right to commute using the company van; (2) relator was fired because he complained to the United States Department of Labor that the employer had not paid for overtime hours worked; and (3) relator had good reason to quit caused by the employer. We affirm.

FACTS

Relator Leon Williams was employed by respondent TLC Special Transportation, Inc. (TLC) from February 12, 2010, until October 15, 2010. He worked full time as a van driver, providing transportation services for senior citizens.

TLC's office is located in Burnsville, and relator resides in Minneapolis. Relator was required to be available for work between the hours of 5:00 a.m. and 6:00 p.m., during which time he could be dispatched for pick-ups. During his first week of employment, relator commuted to TLC's Burnsville office where he picked up a company van each morning and returned it at the end of the day. Thereafter, relator was allowed to keep a company van at his home. Relator signed an agreement regarding his use of the van, which stated that the arrangement was for the convenience of the driver. In exchange for being allowed to keep the company van at home, relator was required to maintain the van and perform daily inspections. This accommodation was available for other drivers as well, but some drivers still chose to commute to the Burnsville office each day to pick up their vans.

On April 28, 2010, relator received a written warning for refusing driving assignments from TLC's dispatcher. Relator reportedly did not want to take driving assignments after 3:30 p.m. because he needed to be available to care for his grandchild.

The warning reminded relator that he was required to be available during TLC's business hours of 5:00 a.m. to 6:00 p.m.

In May 2010, relator asked manager Kimberly Jackson why he had not received overtime pay for work exceeding 40 hours per week. Jackson explained to relator that TLC was exempt from the federal Fair Labor Standards Act (FLSA) regulations requiring overtime pay for hours in excess of 40 hours per week. In July, relator filed a complaint with the U.S. Department of Labor alleging wage and hour violations. Relator received a letter from the U.S. Department of Labor Wage and Hour Division on October 6, acknowledging receipt of his complaint and stating that relator's identity "will be kept confidential to the maximum extent possible" during a possible investigation.

On July 28, relator received a warning for failing to maintain and inspect his van. The warning stated that relator's van was "dangerously low on oil and badly needed a wash." The warning also stated that relator "may lose the privilege of keeping the van at [his] home," should he fail to properly maintain the van.

Relator's van would not start on the morning of October 12. He reported the problem to a dispatcher, and TLC owner Boris Averbakh and a mechanic went to relator's home to repair the vehicle. They were able to get the van running after installing a new starter, but realized that the van also needed new brakes and was again very low on oil. Relator had reported, and TLC was aware, that the van burned oil. But relator had been instructed to check the fluid levels daily, put new oil in the van as needed, and to get regular oil changes. Averbakh discovered that relator had failed to get the oil changed for approximately 12,000 miles. Averbakh took the van back to the

Burnsville office in order to perform repairs and maintenance and then returned it to relator.

On October 15, relator received a second written warning for the poor condition of his van. The warning stated that relator could no longer keep the van at his home and would instead be required to pick up the van each morning at the Burnsville office and return it at the end of the day. This would allow TLC staff to inspect the van each day, maintain it, and make sure it was safe to drive. Relator would no longer be responsible for regular oil changes or checking fluid levels. When Jackson gave relator the written warning and explained the situation to him, relator immediately became upset. He told Jackson that he was quitting and walked out.

Relator established a benefits account with respondent Department of Employment and Economic Development (DEED). DEED determined that relator was ineligible for benefits because he quit his job without good reason caused by the employer. Relator appealed, and a ULJ held a de novo hearing. The ULJ found that relator quit his employment without good reason caused by the employer and is therefore ineligible for benefits. Relator filed a request for reconsideration and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

This court may affirm, remand, reverse, or modify the decision of a ULJ if the substantial rights of a party have been prejudiced because the findings, conclusion, or decision are affected by an error of law or unsupported by substantial evidence. Minn.

Stat. § 268.105, subd. 7(d) (2010); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

"Whether an employee has been discharged or voluntarily quit is a question of fact." *Midland Elec. Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). The statute defines both "quit" and "discharge." A quit "occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (2010). A discharge "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." Minn. Stat. § 268.095, subd. 5(a) (2010). An applicant who quits employment is ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2010).

Relator argues that he did not quit his employment but rather was discharged. Relator states that TLC terminated his employment "under the cloke [sic] of suspending [his] contract rights to commute using the company van."

Relator acknowledged that TLC never told him that he could not come back to work. Instead, he testified that TLC's decision to take away his privileges to the company van was a "practical way of firing me." But requiring relator to pick up his van in the morning and return it at the end of the day is not the equivalent of discharging relator. The warning letter relator received would not lead a reasonable employee to believe that they were no longer allowed "to work for the employer *in any capacity*." *See* Minn. Stat. § 268.095, subd. 5(a) (defining discharge) (emphasis added). Averbakh testified that 40 to 50 percent of TLC drivers pick up their vans each morning rather than

keep them at home. He also testified that TLC "never had any sense to fire [relator] and [was] expecting him to continue to work." Jackson testified that relator became upset upon receiving the warning letter and told her, "that's it, I quit." Jackson asked relator if he was sure and he said yes. She asked him if he wanted to talk to Averbakh about the situation and he said that he did not. The record fully supports the ULJ's finding that it was relator's decision to end his employment.

Relator also appears to argue that he did not quit but was discharged due to his complaint to the U.S. Department of Labor. Notwithstanding that the record supports a finding that relator quit, there is also no evidence to support a finding that relator was discharged in retaliation for his complaint. Although relator made the complaint in July 2010, the Department of Labor did not acknowledge receipt of the complaint until October 6, and the letter stated that relator's identity would be kept confidential. Averbakh testified that he did not know relator had made the complaint until after relator had quit.

Relator also makes several arguments that suggest he believes he had good cause to quit. An employee who voluntarily quits employment is ineligible for unemployment benefits unless "the applicant quit the employment because of 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 directly relates to employment for which the employer is responsible, is adverse to the employee, and "would compel an average, reasonable worker to quit." *Id.*, subd. 3(a)(1)-(3) (2010). This analysis must be applied to the specific facts of each case. *Id.*, subd. 3(b) (2010). The reason why an individual quit

employment is a fact question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as fact question). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether the reason the applicant quit qualifies as a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Relator first argues that the agreement he signed regarding his use of the van is a contractual agreement between the parties and that because he did not violate any of the terms of the agreement, TLC could not take away his privileges to the van. An employee has good reason to quit when an employer breaches an employment agreement, even if the agreement was only an oral promise. *See Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552–53 (Minn. App. 2003) (holding that breach of promise to provide pay raise was good reason to quit), *review denied* (Minn. Sept. 24, 2003). Relator is correct that the agreement does not mention an obligation to maintain the van and get regular oil changes. But the agreement also does not state that an employee has a contractual right to commute using a company van if the employee follows all the terms. The agreement states that it "lists the terms and conditions upon which a driver *may* commute to and from work using a company van." It provides general rules that an employee must follow if they are allowed to keep a van at home, including that the van may not be used for

personal business, may not be driven by non-employees, and must be kept in a secure area. There is nothing in the agreement stating that keeping the van at home was a term of relator's employment to which he was entitled.

There is also nothing in the record to suggest that relator received an oral promise that he would always be allowed to keep the van at his home. Relator was asked by the ULJ whether he had ever been promised that his van privileges could not be taken away; he testified only that "I was given the impression that this was the perk, this was the situation that would occur." Averbakh, on the other hand, unequivocally denied that employees are promised that they will always be able to keep the vans at their homes, stating, "No, no, it's impossible." He testified that the vans often need maintenance or must be kept at TLC's office for one reason or another. The ULJ found the employer's testimony to be credible, and this court will not disturb a ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 345. Moreover, any doubt regarding whether relator was entitled to keep the van at his home is resolved by the July warning letter, which stated in no uncertain terms that "[i]f [relator] fail[ed] to perform inspections or keep the fluids at an acceptable level [he] may lose the privilege of keeping the van at [his] home."

Relator also argues that taking away his van privileges caused a burden for him because he was required to commute to the Burnsville office each morning to pick up his van and then return it at the end of the day. Minnesota law recognizes that transportation to work is generally the responsibility of the employee. *See Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W.2d 314, 316 (1976) (stating that "[i]n the absence of a

contract or custom imposing an obligation of transportation upon the employer, transportation is usually considered the problem of the employee"). This court recently held that an employer's relocation of its office, which resulted in a 50-minute increase in an applicant's round-trip commute, did not provide the applicant with a good reason to quit her employment. *Werner v. Medical Professionals LLC*, 782 N.W.2d 840 (Minn. App. 2010), *review denied* (Minn. Aug. 10, 2010). Here, the record shows that many employees commuted to the Burnsville office each day to pick up their vans. Relator himself commuted to the Burnsville office during his first week of employment, prior to the time he was permitted to keep a company van at his home. Relator was also aware that he could lose the privilege of keeping his company van at home. The distance of relator's commute from his home in Minneapolis to TLC's Burnsville office is not something that was caused by the employer. *See Werner*, 782 N.W.2d at 844 (holding that the applicant's lengthy commute "was a transportation problem that is not attributable to the employer").

We conclude that TLC's decision to take away relator's van privileges was not an action that would cause a reasonable employee to quit.

Affirmed.