

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-19**

David Ward,  
Relator,

vs.

Trillium Development, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed October 3, 2011  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 26161952-3

David Ward, Zimmerman, Minnesota (pro se relator)

Trillium Development, Inc., Rice, 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 Kalitowski, Presiding Judge; Peterson, Judge; and  
Stauber, Judge.

## **UNPUBLISHED OPINION**

**PETERSON, Judge**

Relator challenges the decision by an unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he quit work without good reason caused by the employer, arguing that he was terminated from employment for failing a random drug test and did not quit. We affirm.

### **FACTS**

Relator David Ward worked as a tower technician for respondent Trillium Development, Inc., from June 17, 2010, until the beginning of September 2010. Relator failed a pre-hire drug test but told his supervisor Barbara Houdek that it was just a residual amount left in his system. On August 30, the employer was conducting random drug testing, and relator agreed to retest.

Relator normally worked from 6:00 a.m. until sundown Monday through Friday. He was not scheduled to work on Tuesday, August 31, but Houdek told him that she would call him if work became available. At 3:00 a.m. on August 31, relator sent a text message to his job-site supervisor stating that he was unable to work because his back was sore. Houdek called relator four times on August 31 and twice on September 1 and left a message each time about coming in to work, but relator did not return her calls.

On September 2 or 3, relator received a phone call from the drug-testing laboratory informing him that he had tested positive and asking if there was a reason, such as prescription drugs, for the positive result. Relator testified that, based on that phone call:

I assumed I was terminated. I mean I was notified by a person that presented himself to me as representative of Trillium Development. . . .

....

I did know that I should be talking to [Houdek], but I was very upset but all this was coming down and that she didn't herself notify me.

Relator did not report to work on September 1, 2, 3, 6, or 7. Houdek called relator again on September 7, but he did not answer or return any of her calls, so Houdek assumed that he had quit employment. On September 18, after "giving [himself] time to get clean," relator sent Houdek a text message about getting his job back.

Relator filed a claim for unemployment benefits. A department adjudicator determined that relator was ineligible for unemployment benefits because he quit without a good reason caused by the employer. Relator appealed to a ULJ. Following an evidentiary hearing, the ULJ determined that relator was ineligible for unemployment benefits because he quit employment without a good reason caused by the employer. On relator's request for reconsideration, the ULJ affirmed her initial decision. This certiorari appeal followed.

## **DECISION**

This court may reverse or modify the ULJ's decision if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence viewing the record in its entirety. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2010).

This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*,

721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's factual findings will not be disturbed when they are supported by substantial evidence. *Id.* Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

“Whether an employee has been discharged or voluntarily quit is a question of fact.” *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). “A quit from employment 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 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.” Minn. Stat. § 268.095, subd. 5(a) (2010).

After taking the drug test on August 30, relator did not return Houdek's calls about coming into work on August 31 and September 1 and 7, and he failed to report to work on September 1, 2, 3, 6, and 7. Although relator claims that he understood that he had been discharged because the person who called from the drug-testing laboratory presented himself as a representative of the employer, six of the calls that relator failed to return were made before relator was told about the drug-test results. Also, Houdek testified that drug-testing-laboratory personnel were not authorized to terminate Trillium employees, and relator even admitted knowing that he should have contacted Houdek, but

he delayed until September 18 before doing so. Without speaking to Houdek or a known authorized representative of the employer, it was not reasonable for relator to believe that he had been discharged by a person calling from the drug-testing laboratory, and substantial evidence supports the ULJ's finding that relator quit employment.

Relator also disputes Houdek's testimony. The ULJ found: "There were many discrepancies between [relator's] and Houdek's testimony. Houdek's testimony was more forthright and specific, and therefore more credible." We defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Relator argues that the ULJ erred by allowing Houdek to testify about telephone records and other documents that were not provided to him before the hearing. Houdek tried to submit documents by faxing them to the ULJ on the day of the hearing, but, because the documents had not been disclosed to relator, the ULJ did not allow the documents into evidence. During her testimony, however, Houdek referred to documents that appear to be the documents that were not admitted. Relator objects that there was no way for the ULJ to determine the truth of Houdek's testimony because no proof was submitted.

Although telephone records that show that a call was made or received at a particular time can be used to corroborate testimony that the call occurred, there is no requirement that testimony be corroborated. Using documents to corroborate testimony can make the testimony more credible, but testimony that is not corroborated can still be found credible. Both relator and Houdek testified about telephone calls that they made or

received. Relator submitted telephone records, and Houdek did not. But the records that relator submitted do not corroborate his testimony or contradict Houdek's testimony.

Relator testified that his supervisor called him between 3:00 and 4:00 in the afternoon on August 31, but he did not identify a line in his telephone records that shows that his supervisor called him at that time, and the records he submitted, which show the time that a call was made or received, do not show that he received any calls between 3:00 and 4:00 in the afternoon on August 31. Relator also testified that he called Houdek at about 8:00 o'clock on August 31, but in the telephone record that was submitted to the ULJ, the line that could show that relator made a call at that time has been completely crossed out. Relator testified that the line was actually highlighted, but, whatever occurred, no information from the line can be discerned in the record submitted to the ULJ. Houdek testified that she called relator several times on August 31 and September 1, but, because she did not say what telephone number she called, there is no reason to conclude that the records relator submitted are for the phone that she called. Consequently, although relator submitted telephone records, the ULJ's decision does not refer to the records, and it is not apparent what effect the records had on the ULJ's credibility determination.

**Affirmed.**