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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0523**

Justin A. Witten,
Relator,

vs.

Omni Pro, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 25, 2013
Affirmed
Harten, Judge***

Department of Employment and Economic Development
File No. 30408841-3

Justin A. Witten, Farmington, Minnesota (pro se relator)

Omni Pro, Inc., Blaine, Minnesota (respondent)

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

Considered and decided by Kirk, Presiding Judge; Smith, Judge; and Harten,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HARTEN, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator is ineligible for benefits because he did not have a good reason caused by his employer for quitting his job. We conclude that the evidence substantially sustains the ULJ's findings on which that decision is based, and, accordingly, we affirm.

FACTS

From July 2011 until April 2012, relator Justin Witten worked part-time for respondent Omni Pro, Inc., in the elevator business. During this period, he also worked part-time for a subcontractor of Omni Pro, BP Diversified (BP). In August 2011, relator recorded hours that he worked for BP as having been worked for Omni Pro. When Omni Pro learned of the error, it stopped payment on relator's paycheck, and BP paid him for those hours.

In April 2012, while working on a job for Omni Pro, relator was informed that he was being laid off from his job at BP. He decided to quit his Omni Pro employment and walked off the job.

Relator applied for unemployment benefits, claiming that he quit because of safety concerns and the fact that his paychecks were late. An administrative clerk for respondent Minnesota Department of Employment and Economic Development (DEED) determined that relator was not provided with the proper safety equipment, that this was a good reason to quit caused by his employer, and that relator was eligible for benefits.

Omni Pro appealed this determination. A telephone hearing was held, wherein Omni Pro was represented by its owner and relator represented himself. When asked for a list of the reasons why he quit his job, relator replied, “[S]afety issues on the job . . . and also issues with being paid on time.”¹

Following the hearing, the ULJ found that (1) relator’s checks were received late because relator did not pick them up when they were available, (2) relator was responsible for the error that resulted in payment being stopped on his paycheck in August 2011, (3) Omni Pro’s owner provided all the safety equipment requested, and (4) relator had never expressed to Omni Pro any concern about safety. The ULJ concluded that relator did not have a good reason caused by his employer for quitting his job. Accordingly, relator was ineligible to receive unemployment benefits, including the \$3,204 that he had already received. In response to relator’s request for reconsideration, the ULJ affirmed her prior decision.

Relator challenges that decision, arguing that he had a good reason caused by his employer for quitting his job.

¹ In his request for reconsideration, relator said that the “personal relationship” between the owner of Omni Pro and the owner of BP “led to most of [his] issues,” and he offered new evidence of this relationship. But, except for one reference in his closing argument, relator did not mention this relationship during the hearing as a reason for quitting and repeatedly gave only payment issues and safety issues as his reasons for quitting. In considering a request for reconsideration, a ULJ “must not . . . consider any evidence that was not submitted at the evidentiary hearing” Minn. Stat. § 268.105, subd. 2 (c) (2012). The ULJ declined to address the relationship as a reason for relator quitting his job, concluding that “[i]f [his employers’ personal relationship] was a reason [relator] quit his employment, [relator] would have mentioned it prior to his closing statement.”

DECISION

“An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law.” *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010). “This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. 1 Oct. 2008).

1. Safety Issues

At the hearing, relator testified that the safety clips he was using were not approved by the Occupational Safety and Health Administration (OSHA). But when the ULJ asked relator if he knew which safety gear was OSHA-approved, relator answered, “I personally do not, no.”

Omni Pro’s owner asked relator if he knew what fall protection was OSHA-approved, and relator again said, “No, I do not.” Relator agreed with the owner’s statement that relator’s information on whether equipment was OSHA-approved came from other workers at the job site. When the ULJ asked the owner whether relator’s statement that “the clips that they were wearing were not proper under OSHA” was accurate, the owner testified:

No [T]he safety and fastener equipment comes from . . .
a full service distributor of OSHA and compliance safety
products for construction and . . . industry. . . . [T]he products

that [relator] is referring to are D-Rings[.] . . . I was notified one time about requesting the D-Rings and I delivered them immediately, the same day that they were requested. And so, when [relator and I] went into the shaft, we also used the safety equipment, the fall protection, and the . . . D-Rings together. Also, there was nothing told to me about the concern [as to] the D-Rings[.] . . .

. . . .

. . . [W]hen I was in the shaft with [relator,] . . . we both used the D-Rings at . . . the same time. We both had our . . . fall protection on . . . we had our protective gear on, we were both using it to climb up and down the shaft.

When asked if relator had ever complained about not having the proper equipment, the owner answered, “No, because we had it” and added that “[a]ny equipment that would have been requested, I would have delivered it before they went, before they needed it. And so, typically I would say, . . . don’t start [the job] until you have all of the safety equipment that’s necessary.”

The ULJ noted that the owner’s testimony “was more credible than [relator’s] testimony, because it was consistent and presented a more plausible chain of events.”

Based on the owner’s testimony, the ULJ found:

[The owner] provided all requested equipment. Furthermore, there is no evidence that [relator] ever complained about [safety issues]. [Relator] argued that his coworker complained about it twice, and [said] that [he] did not complain because he thought the [owner] was going to bring the proper equipment. However, it is not credible that [relator] believed that the equipment they were using was dangerous, yet agreed to do work in an elevator shaft with the owner of the company without ever mentioning that the equipment was not safe.

This evidence substantially sustains this finding. Relator's alleged safety concern was not a good reason caused by his employer for quitting his job.

2. Payment Issues

Relator testified that he was supposed to be paid on Fridays and "wouldn't maybe get [the check] 'til Saturday or Sunday" and that "it was brought up every Friday that I needed my check before 3." He testified that he "would start asking Thursday night if [he] would be able . . . to pick up [the] check on Friday at some point" and that "it was always something different each week, for why it would be late." Relator also testified that he was always paid by the following Monday.²

The owner testified that:

[Relator] was supposed to come to the office to get his check between 3 and 5 p.m. [on Fridays.] . . . [T]ypically, [employees] get off of work at 2 to 3 o'clock, and I sit at the office and wait for them to pick up a check, [or] they would receive a check either the following day . . . [or] on Monday. But [relator] would always tell me that he would have to backtrack to go and pick up his child at daycare, and so, that . . . barely worked for him. And so, he would get it on . . . a different day.

The owner added that she had "offered automatic deposits so that [the check] would go into [the employee's] bank" but that relator "did not sign up for it." When asked if relator complained about not getting his check, the owner said:

Yes, and I would tell him if he handed in his timesheet on time, then we wouldn't have the problem. But there were times when [relator] would hand in his timesheet the day that

² Relator testified that his pay was once late because Omni Pro stopped payment on the paycheck. But, on that occasion, relator had reported hours worked for Omni Pro that were actually worked for BP, and he was promptly paid by the owner of BP.

he was supposed to get paid, and I would tell him, you're supposed to hand this in the Friday before to get paid.

....

[I]t was relator's responsibility to hand in his timesheet on time.

The ULJ found that:

Although [relator] testified that he often had to find [the owner] to get paid, [the owner] credibly testified that this was because [relator] could not pick up his paycheck during the allotted times. Furthermore, some of [relator]'s paychecks were late because [relator] did not report his hours on time[.] . . . [I]t was [relator's] schedule or actions that led to late pay.

Again, the evidence substantially sustains this finding.

We conclude that relator did not have a good reason caused by his employer for quitting and was ineligible for unemployment benefits.

Affirmed.