STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1008

Fredrick L. Shaw,
Relator,

vs.

Alexandria Pro-Fab Co., Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent

Filed March 17, 2014
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 30948304-3

Fredrick L. Shaw, St. Paul, Minnesota (pro se relator)

Alexandria Pro-Fab Co., Inc., Alexandria, Minnesota (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

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

WORKE, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits, arguing that his wage reduction and long commute were good reasons to quit caused by his employer. We affirm.

D E C I S I O N

We review a ULJ's decision to determine whether 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) (2012). 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. . . . [W]e 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).

The ULJ decided that relator Fredrick L. Shaw quit his employment with respondent Alexandria Pro-Fab Co., Inc. (Pro-Fab) and is ineligible for unemployment benefits. Shaw claims that he had a good reason to quit. Whether Shaw's reason for quitting constitutes good cause attributable to the employer is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012).

An employee who quit employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception to ineligibility is when an employee quit for "a good reason caused by the employer." *Id.*,

subd. 1(1). This exception applies only when the reason for quitting (1) "is directly related to the employment and for which the employer is responsible"; (2) "is adverse to the [employee]"; and (3) "would compel an average, reasonable [employee] to quit and become unemployed . . . ." *Id.*, subd. 3(a) (2012).

Shaw began working in a set-up position at Pro-Fab on January 21, 2013. He earned $16 per hour and time-and-a-half for hours worked over 40 hours a week; he typically worked 40-50 hours a week. Although new employees were initially required to work a set schedule, Pro-Fab accommodated Shaw's request to alter his schedule because he commuted from St. Paul to Alexandria. Shaw was permitted to work 14 hours a day three days a week and six hours one day a week. Shaw arranged with a hotel for two nights of lodging, and planned to relocate to Alexandria in August.

After approximately one month, it became evident that Shaw was unqualified for the position. Pro-Fab offered Shaw a machine-operator position to gain training before returning to set-up. He was offered $14 per hour and would still be working 40-50 hours a week because overtime is "very often available." But Shaw would have to work when the machines were scheduled to run. On March 4, 2013, Shaw declined the offer because of the decrease in pay and fixed schedule.

Shaw argues that a 32% drop in wages was a good reason to quit employment caused by the employer. Shaw relies on *Scott v. Photo Ctr., Inc.*, in which the supreme court determined that a substantial pay reduction gives an employee good cause for quitting employment. 306 Minn. 535, 536, 235 N.W.2d 616, 617 (1975). In *Scott*, the

employee's fixed salary was changed to commission, resulting in a 25% wage reduction. *Id.* at 535, 235 N.W.2d at 616.

Shaw claims that "[u]nder the position of an operator [he] would work 40 hours a week with no guarantee of overtime at a pay rate of $14 an hour." But Pro-Fab's human resources director testified that in the operator position Shaw would still be working 40-50 hours a week because overtime is "very often available." There is no support for Shaw's claim that he would be working only 40 hours a week as an operator because he quit before accepting the new position. Therefore, if Shaw continued to work his usual overtime hours, the $2 hourly reduction equates to a 12.5% reduction, not the 32% reduction asserted by Shaw.

The ULJ determined that the pay reduction was not so substantial that an average reasonable worker would quit and become unemployed rather than remaining in employment. Minnesota courts have held that a reduction in wages of 15 percent or less does not constitute a good reason caused by the employer for quitting. *See Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84, 85 (Minn. 1981) (holding that "wage cuts of 21-26 percent" were so unreasonable that employees had no alternative but to quit); *but see Dachel v. Ortho Met, Inc.*, 528 N.W.2d 268, 270 (Minn. App. 1995) (holding that reduction of approximately ten percent was not substantial and that the relator failed to prove that a loss of overtime would have contributed to a significant change in his wages, especially when he was not promised a specific amount of overtime when hired). The 12.5% reduction is not so substantial to cause an average reasonable worker to quit. The ULJ determined that Shaw likely would have accepted the operator position if he had

been living in Alexandria. Therefore, the ULJ did not err in determining that the wage reduction was not a good reason to quit caused by Pro-Fab.

The ULJ also determined that Shaw may have had a valid personal reason for quitting because the commute and schedule would cost Shaw more in gas and lodging, but determined that these reasons were not a good reason caused by the employer.

In *Hill v. Contract Beverages, Inc.*, the employee commuted from St. Paul to Eagan. 307 Minn. 356, 357, 240 N.W.2d 314, 315 (1976). He worked third shift, but then was assigned to first shift. *Id.* The employee did not have a vehicle, and while working third shift he obtained transportation from a coworker, but had difficulty finding transportation after he was placed on first shift. *Id.* The employee requested a transfer to third shift, which was denied. *Id.* The employee quit and was determined to be ineligible for benefits because he quit without a good reason attributable to the employer. *Id.* He asserted that by changing his shift, the employer created an unreasonable burden on his ability to get to and from his employment. *Id.* at 358, 240 N.W.2d at 316. But the supreme court determined that "[i]n the absence of contract or custom imposing an obligation of transportation upon the employer, transportation is usually considered the problem of the employee." *Id.*

Shaw's issues with paying for gas and lodging are not attributable to Pro-Fab. The ULJ did not err in determining that Shaw quit his employment without a good reason caused by the employer and is therefore ineligible for unemployment benefits.

Affirmed.