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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1336**

Jeffrey J. Moore,
Relator,

vs.

United Parcel Service, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed July 1, 2008
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 6692 07

Jeffrey J. Moore, 5100 35th Avenue South, Minneapolis, Minnesota 55417 (pro se relator)

United Parcel Service Inc., c/o TALX UCM Services Inc., P.O. Box 283, St. Louis, Missouri 63166-0283 (respondent employer)

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Considered and decided by Hudson, Presiding Judge; Shumaker, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

In this certiorari appeal, relator challenges the decision of the unemployment law judge (ULJ) that he was disqualified from receiving unemployment benefits because he quit without good reason caused by the employer following a disagreement about his break time. Relator argues that he had good reason to quit because he was not provided with adequate opportunity to take his rest or meal periods. Because relator quit without good reason caused by his employer, we affirm.

FACTS

In October 2005, relator Jeffrey Moore began working for United Parcel Service, Inc. (UPS). Relator eventually became a full-time package driver covered under a union contract with the Teamsters. Relator was paid an hourly wage of \$15.75, and he generally worked between 40 and 50 hours per week. The length of relator's day varied depending on the amount of packages assigned to him that day. As a full-time package driver, relator was also provided two paid ten-minute breaks, and one unpaid 40-minute lunch break. These breaks could be taken whenever relator wanted, as long as his packages were properly handled.

On October 21, 2006, relator quit his job with UPS. Relator subsequently established a benefit account with respondent Minnesota Department of Employment and Economic Development (department). A department adjudicator initially determined that relator quit his employment for a good reason caused by UPS and, therefore, that he was

not disqualified from receiving benefits. UPS appealed that decision, and a de novo hearing was held on the matter.

At the hearing, relator testified that after working for about two weeks as a full-time driver, he complained about not having time to take his breaks. Although relator was told by his supervisors to simply take his breaks, relator testified that he was concerned that he “would have been in trouble eventually” because taking his break time would have put him behind schedule. According to relator, taking his breaks would have meant finishing his route later and more overtime pay. Relator testified that he believed that such behavior would have subjected him to discipline.

Relator also testified that he talked to the Teamsters union about his situation, and that the union suggested that he take his breaks during the day, and if he could not finish with all of his packages, to simply bring them back. But relator testified that he shunned this advice for fear that such behavior would get him fired. In fact, relator claimed that when he actually decided to take his breaks and bring packages back rather than working late to complete his route, he falsely told his supervisors that he did not deliver the packages because he could not find them on his truck. Relator acknowledged that some drivers took their breaks at the end of their shift, but relator stated that at the end of his shift, he “just want[ed] to go home.”

Finally, relator testified that after being one of four drivers who received disciplinary letters for not properly delivering business packages, he decided to quit. According to relator, he did not fully read the disciplinary notice, but feeling that UPS wanted to create a paper trail to get rid of him, he “finally said okay I’m done.”

Relator's supervisor testified that relator struggled with the job, but that when relator complained, he would sometimes ride along with relator to assist him in finishing on schedule. Relator's supervisor also testified that the job is "physically demanding," but "there was never once, that [relator] was ever told, not to take his lunch." The human resources supervisor at UPS testified that although relator may have complained to his direct supervisor, the human resources department was not aware of the situation because relator failed to complain directly to the human resources department.

After the de novo hearing was held, the unemployment law judge (ULJ) reversed the initial determination and held that relator quit his employment for other than a good reason caused by UPS. Thus, relator was disqualified from receiving unemployment benefits. Relator subsequently filed a request for reconsideration to the ULJ, who affirmed his decision. This certiorari appeal follows.

D E C I S I O N

Relator contends that because he quit for good reason caused by UPS, the ULJ erred in concluding that he was disqualified from receiving unemployment benefits. On certiorari appeal this court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's "substantial rights . . . may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006).

Whether an employee had good reason to quit caused by the employer is a question of law, which this court reviews de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669

N.W.2d 416, 418 (Minn. App. 2003). But “[w]e view the ULJ’s factual findings in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.*

There is no dispute that relator voluntarily quit his employment. Under Minnesota law, an employee who voluntarily quits his employment is disqualified from receiving unemployment benefits unless the employee had “a good reason caused by the employer” to quit. Minn. Stat. § 268.095, subd. 1(1) (2006). “A good reason caused by the employer for quitting is a reason: (1) that is directly related to the employment . . . ; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed” *Id.*, subd. 3(a). The test for reasonableness in this context is objective and is applied to the average person, not to the supersensitive. *Ferguson v. Dep’t of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976).

Here, the ULJ found that “[t]he evidence fails to show that UPS did anything to cause [relator] to quit the employment or that would cause an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” The ULJ also found that “[a]lthough [relator] may have complained to his supervisor about his lunch breaks, the evidence shows that [relator’s supervisor] tried to assist [relator] with his routes and allow him more time to take his lunch break.” The ULJ further noted that relator “was never disciplined for working longer hours in order to get his routes

finished.” Thus, the ULJ concluded that relator quit his employment without good reason caused by his employer.

Relator argues that the ULJ erred in denying his claim for unemployment benefits because the ULJ “did not consider any of [relator’s] testimony or facts pertaining to this case.” Relator claims that the evidence and testimony demonstrate that he had good reason to quit his employment at UPS because he was not provided with the opportunity to take lunch and rest breaks.

We disagree. The record reflects that full-time drivers are expected to manage their workload during the day and to take their breaks when convenient. The record also reflects that the job is “tough” and “physically demanding.” Although relator testified that he often skipped his breaks and complained to his supervisor about not being able to take his breaks due to the heavy workload, relator’s supervisor testified that “there was never once, that [relator] was ever told, not to take his lunch.” The ULJ is in the best position to assess credibility, and after weighing the evidence and testimony presented, the ULJ found relator’s claim, that he was not provided with the opportunity to take his lunch and rest breaks, to be not credible. *See Lamah v. Doherty Employment Group, Inc.*, 737 N.W.2d 595, 601 (Minn. App. 2007) (stating that “the ULJ [i]s in the best position to assess credibility and weigh the evidence, and we will not second-guess those judgments”).

Relator contends that his truck was loaded in such a way that it was impossible for him to make his deliveries and take his breaks without working a great deal of overtime. Relator argues that working too much overtime was discouraged by UPS, and that he

would have lost his job if he worked a lot of overtime. But “[n]otification of discharge in the future, . . . , shall not be considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(e). Thus, the fact that relator was afraid of being disciplined or fired for working late was not a good reason to quit. *See Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984) (holding that employee who chooses voluntary resignation when faced with either discipline or resignation is disqualified from receiving unemployment benefits).

We also note that relator was never disciplined for working late and was never told by his supervisor not to take the allotted break-time. When relator complained to the union about his problem, the union suggested that he take his breaks and return with any undelivered packages. But relator testified that he did not follow the union’s advice because he was concerned that he would get fired for failing to complete his route. Moreover, when relator did take his breaks and returned with undelivered packages, relator testified that he lied about why the packages were undelivered. Although relator testified that his only practical choice was to quit his job, the record reflects that relator’s supervisor tried to assist relator with his routes to allow him more time to take his lunch break. Accordingly, the ULJ properly concluded that relator was disqualified from receiving unemployment benefits because he quit his job without good reason caused by his employer.

Affirmed.