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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1516**

Michael W. Kersey,
Relator,

vs.

Day by Day of St. Paul, Inc.,
Respondent.

Department of Employment and Economic Development,
Respondent

**Filed June 4, 2012
Affirmed
Wright, Judge**

Minnesota Department of Employment and Economic Development
File No. 27965996-3

Michael W. Kersey, St. Paul, Minnesota (pro se relator)

Day by Day of St. Paul, Inc., St. Paul, Minnesota (respondent)

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 Randall,
Judge.*

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

UNPUBLISHED OPINION

WRIGHT, Judge

Relator challenges the decision of an unemployment law judge (ULJ) that he is ineligible for unemployment benefits, arguing that he quit his employment because of a good reason caused by his employer. We affirm.

FACTS

Relator Michael W. Kersey worked as a cook for respondent Day by Day of St. Paul, Inc., at its café, for over three and one-half years. On June 21, 2011, Kersey got into a dispute with a coworker, the café owner's son. Kersey ended the dispute by leaving the café. After Kersey left, the assistant manager on duty called the general manager (the manager), who immediately came to the café and investigated the incident.

That same day, Kersey applied for unemployment benefits. On his application, Kersey indicated that his employment ended on June 21, 2011. In response to the question asking the "reason for quitting" that he gave to his employer, Kersey described the altercation with his coworker and stated, "I don't feel like I should have to work in an environment where I have to worry about this sort of thing. . . . I can't work in a place where I am being physically threatened by anyone, let alone the owner's son. . . . I don't have to put up with this kind of sh-t." Kersey also sent the manager an e-mail message stating, "I guess that's it then. . . . I am mad, a little hurt and determined to not work in a place where this type of behavior is ok. I will drop my key off tomorrow when I pick up my check."

The following day, Kersey returned his key and picked up his paycheck. The manager also left him a note that said, “Yesterday’s incident was unfortunate. We have not heard your side of the story. Witnesses here seemed to indicate that you may have been the instigator. If you want to try to work this out, we are willing to sit down with you and [the coworker involved in the incident] and try to resolve the issue.” In response to this invitation, Kersey and the manager met the following Monday, June 27. At this meeting, the manager told Kersey that if he wanted to be rehired, he needed to attend anger-management classes. Kersey refused.

The Minnesota Department of Employment and Economic Development determined that, because he did not have a good reason caused by the employer for quitting, Kersey is ineligible for unemployment benefits. Kersey appealed this determination. Following a telephonic hearing, a ULJ found that Kersey quit his employment without a good reason caused by his employer and, therefore, is ineligible to receive unemployment benefits. Kersey requested reconsideration, and the ULJ affirmed his initial findings of fact and decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other

error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010).

A ULJ’s factual findings are viewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But whether the ULJ’s findings establish that the applicant falls within a statutory exception to ineligibility presents a question of law, which we review de novo. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594-95 (Minn. App. 2006).

A person who quits his employment generally is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). But an exception exists for an employee who quits because of a good reason caused by the employer. *Id.*, subd. 1(1). A good reason caused by the employer is a reason “(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*, subd. 3(a) (2010). This exception applies only if the employee complains to the employer about the adverse condition and affords the employer a reasonable opportunity to cure the condition. *Id.*, subd. 3(c) (2010).

Kersey argues that the ULJ erred by finding that he does not fall within the exception to ineligibility for employees who quit for a good reason caused by the employer. Kersey specifically challenges the ULJ’s factual finding that he quit on June 21, thereby denying his employer a reasonable opportunity to correct the adverse working

conditions.¹ Kersey argues that, when he left respondent's café on June 21, he "simply wanted to get away," not necessarily to quit. Kersey implies that he did not actually quit until June 27, when the manager conditioned any future employment at the café on Kersey's participation in anger-management classes. Kersey suggests that, because he did not quit until after his employer tried to resolve the issue by presenting him with an "ultimatum," he gave his employer a reasonable opportunity to address the situation, which qualifies him for the statutory exception set forth in Minn. Stat. § 268.095, subd. 1(1).

The record does not support Kersey's argument. Kersey testified that, when he left the café on June 21, he intended to quit. After leaving the café, Kersey immediately applied for unemployment benefits. On his application, Kersey stated that he told his employer why he quit and listed June 21, 2011 as the last day of his employment. On June 21, Kersey also wrote to the manager, stating, "[T]hat's it" and advising her that he would drop off his key and pick up his paycheck the following day. Indeed, Kersey did so on June 22. Moreover, Kersey testified that he rejected the manager's "offer of reemployment" on June 27. (Emphasis added). Contrary to Kersey's argument that his "intentions upon leaving the café are impossible to determine," the record clearly establishes that Kersey quit his employment on June 21.

¹ Kersey also challenges the ULJ's failure to recognize the coworker involved in the dispute as either an owner of the café or a representative of its owner. Because the coworker's status as an owner is not germane to the statutory exception at issue, we do not address this argument. *See* Minn. Stat. § 268.095, subd. 3 (2010) (defining good reason caused by employer for quitting employment).

Based on the uncontroverted evidence, Kersey quit his employment on June 21. Therefore, the ULJ's factual finding that Kersey did not give his employer a reasonable opportunity to correct the situation prior to quitting is supported by the record. The ULJ properly concluded that, under Minnesota law, Kersey did not quit his employment for a good reason caused by his employer, *see* Minn. Stat. § 268.095, subd. 3(c); and because no other statutory exception applies here, the ULJ properly concluded that Kersey is ineligible to receive unemployment benefits.

Affirmed.