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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1773**

Rodney C. Norgren,  
Relator,

vs.

Ripley's, Inc.,  
Respondent,

Department of Employment  
and Economic Development,  
Respondent.

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

Department of Employment  
and Economic Development  
File No. 27755003-3

Rodney C. Norgren, Fergus Falls, Minnesota (pro se relator)

Ripley's Inc., Erhard, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Randall,  
Judge.\*

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

## UNPUBLISHED OPINION

**HUDSON**, Judge

Relator challenges the unemployment law judge's (ULJ) decision that he was ineligible for unemployment benefits for eight weeks because he failed to accept suitable employment without good cause. We affirm.

### FACTS

Relator Rodney C. Norgren worked for respondent Ripley's Inc., a utility contracting company, as a full-time, seasonal employee from 1996 until 2010. In his last season working for Ripley's Inc., Norgren earned between \$18 and \$19 per hour. After Norgren was laid off for the season in fall 2010, he had a heart attack, and a stent was put into his heart. The doctor told him he "probably should slow down a little bit."

In the early spring of 2011, Ripley's Inc. contacted Norgren about beginning a project in May. Shortly before the project was scheduled to start, Norgren delivered two letters to Ripley's Inc. In one of the letters, Norgren stated that "[i]f [he] go[es] to work for Ripley's Incorporated for the 2011 season," he planned to take a week off so that he could attend two doctor's appointments. He further stated that he was "planning on being laid off by October 28, 2011" and that he thought he "should plan to work one month at a time that way if I am not comfortable with the working condition and personnel I would like to be laid off and draw all my Employment out." In the second letter, Norgren raised concerns that he was paid less than other employees and about the work ethic and job performance of the other employees.

The president of Ripley's Inc., David Ripley, called Norgren and told him they would not need him for the season. Norgren applied for and begin receiving unemployment benefits, but the Minnesota Department of Employment and Economic Development (DEED) later determined that he was ineligible for unemployment benefits for eight weeks because he refused or avoided an offer of suitable employment, pursuant to Minn. Stat. § 268.085, subd. 13c (2010). DEED also found that he was overpaid \$2,232 in unemployment benefits. Norgren appealed the determination.

Following an evidentiary hearing, the ULJ determined that Norgren “failed to accept suitable employment when offered, without good cause, and is ineligible for payment of unemployment benefits for 8 calendar weeks as a result.” The ULJ concluded that Norgren was overpaid \$2,232 in unemployment benefits. Norgren filed a request for reconsideration, and the ULJ affirmed his decision. This certiorari appeal follows.

## **D E C I S I O N**

When reviewing a ULJ's eligibility decision, this court may affirm, remand 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 affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). 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, 464 (Minn. 2002). This court views 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). While this court reviews questions of law de novo, "findings that are supported by substantial evidence will not be disturbed." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007); *see also* Minn. Stat. § 268.105, subd. 7(d)(5).

### *Suitable employment*

An applicant for unemployment benefits is ineligible to receive benefits for eight weeks if, without good cause, the applicant does not accept suitable employment that is offered to him. Minn. Stat. § 268.085, subd. 13c(a)(2). "Suitable employment" is defined as "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." Minn. Stat. § 268.035, subd. 23a(a) (2010); *see also* *Preiss v. Comm'r of Econ. Sec.*, 347 N.W.2d 74, 76 (Minn. App. 1984) (stating that "suitable work" is work that an employee customarily performs or is fit to perform). In determining whether employment is suitable, the following factors are considered: "[T]he degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence." Minn. Stat. § 268.035, subd. 23a(a). The ULJ has wide discretion in determining if work is suitable, but must follow and apply relevant statutory standards. *Mbong v. New Horizons Nursing*, 608 N.W.2d 890, 893 (Minn. App. 2000).

Here, Norgren worked for Ripley's Inc. for approximately 15 years as a seasonal laborer, and the job the company offered him for the 2011 season was the same job that he had performed for several years. The job offer was for a full-time position with the same salary that Norgren had received at the end of the previous season. We conclude that the offer Ripley's Inc. made to Norgren was an offer of suitable employment because the work was in Norgren's labor area and reasonably related to his qualifications.

Norgren argues that he did not refuse an offer of suitable employment. He contends that his letters merely contained "[q]uestions, requests, and suggestions" and that he "understood that there was a chance that none of the questions or requests would be answered or honored but [he] believe[d] [he] had the right to have a discussion regarding the matters." But, in his letters to Ripley's Inc., Norgren did more than simply ask questions and make suggestions. Instead, he demanded changes in the terms of the employment, thus rejecting the terms of the offer. *See Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996) (concluding that an employee failed to accept an offer of suitable employment when he refused to travel to another city to discuss positions that were available). Norgren made specific demands of Ripley's Inc. regarding the employment, stating that "if" he came back to work in 2011, he was "planning" to take a week off for doctor's appointments and that his "plan" was to work one month a time. As a result, the president of Ripley's Inc. testified that he construed Norgren's demand to work on a month-by-month basis as a refusal to work under the same conditions. Norgren had no reason to expect that he would be allowed to work month to month, and he admitted that he had never done so in the past. We conclude that the record supports

the ULJ's finding that Norgren refused the offer of suitable employment when he sent letters to Ripley's Inc. that requested "unreasonable" terms of employment.

*Good cause*

We next consider whether Norgren had good cause to reject the offer of employment. "Good cause" is defined as "a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment." Minn. Stat. § 268.085, subd. 13c(b). Whether an employee had good cause to refuse an employer's offer of suitable employment is a question of law that is reviewed de novo. *See Lolling*, 545 N.W.2d at 377.

Here, the ULJ determined that Norgren's concerns about other employees, his rate of pay, and his medical condition did not constitute good cause. There is no evidence in the record about the other employees' rate of pay and how it differed from Norgren's, other than Norgren's allegation that he was paid \$1 to \$2 less than his coworkers. And Norgren's concerns about his co-workers do not provide good cause to quit. In addition, there is no evidence in the record that Norgren's medical condition affected his ability to perform the work. Norgren testified that his doctor told him to slow down, but he did not provide any medical records or letters from his doctor stating that he could not perform the work. We conclude that there is sufficient evidence in the record to support the ULJ's determination that Norgren did not have good cause to reject the offer of suitable employment.

*Norgren's other arguments*

Finally, Norgren argues that he was discharged and did not quit the employment, stating that he was “terminated without a letter of termination.” An employee is ineligible for unemployment benefits if the employee voluntarily quits the employment, unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2010). In contrast, an employee who was discharged is eligible for employment benefits unless the discharge was for employment misconduct. Minn. Stat. § 268.095, subd. 4 (2010). Whether an employee was discharged or quit is a question of fact, and this court will not disturb factual findings if they are substantially supported by the evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Here, the ULJ did not make a determination that Norgren was discharged or quit his employment. Instead, the ULJ determined that Norgren refused an offer of suitable employment without good cause. The record establishes that Norgren was a seasonal employee who was laid off for the season and then refused an offer of employment for the next season. Thus, he neither quit nor was discharged.

Norgren next contends that his request for time off for doctor's appointments was reasonable, and that he should have been able to discuss his requests with Ripley's Inc. He further argues that Ripley's Inc. should have given him the opportunity to continue with the employment or resign. But Ripley's Inc. was not required to discuss Norgren's requests with him or to accept the altered terms of employment demanded by Norgren. Similarly, while Ripley's Inc. could have rejected Norgren's requests but still given him an opportunity to continue with the employment, it was not required to do so.

Accordingly, because substantial evidence supports the ULJ's determination that Norgren failed to accept suitable employment that was offered to him, without good cause, we conclude that the ULJ did not err in concluding that Norgren was ineligible to receive unemployment benefits for eight calendar weeks.

**Affirmed.**