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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1983**

Robert W. Hildreth,
Relator,

vs.

Estes Express Lines,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 25, 2012
Affirmed
Toussaint, Judge***

Department of Employment and Economic Development
File No. 27929647-3

Adine S. Momoh, Thomas F. Nelson, Leonard, Street and Deinard, Minneapolis,
Minnesota (for relator)

Jennifer L. Young, Larson King, LLP, St. Paul, Minnesota (for respondent employer)

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

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Toussaint,
Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he quit his employment without a good reason caused by his employer. Because relator did not give his employer a reasonable opportunity to address his concerns, we affirm.

DECISION

Relator Robert Hildreth argues that he had a good reason to quit his employment because his employer, respondent Estes Express Lines, failed to appropriately address his security concerns after the husband of a subordinate employee threatened him at work.

This court will affirm the ULJ's decision unless it is affected by an error of law or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2010). "Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). The reason that an employee quit his or her employment is also a question of fact. *Embaby v. Dep't of Jobs & Training*, 397 N.W.2d 609, 611 (Minn. App. 1986). Whether an employee is eligible for unemployment benefits under the facts as found by the ULJ, however, is a question of law that we review de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who voluntarily quits employment may be eligible for unemployment benefits if "the applicant quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2010). A good reason caused by the employer directly relates to employment, is adverse to the employee, and

“would compel an average, reasonable worker to quit.” *Id.*, subd. 3(a)(1)–(3) (2010). Legitimate safety concerns can be a good reason to quit employment. *Nichols*, 720 N.W.2d at 595; *Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 511-12 (Minn. App. 1997). The ULJ must determine whether an employee’s safety concerns were reasonable “based on the information known to the employee at the time; not whether the conditions were ‘in fact’ safe.” *Haskins*, 558 N.W.2d at 511. Whether the reason would cause a reasonable average person to quit is an objective determination. *Ferguson v. Dep’t of Emp’t Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). The employee must “give the employer a reasonable opportunity to correct the adverse working conditions” before they can be considered a good reason caused by the employer. Minn. Stat. § 268.095, subd. 3(c) (2010); *Nichols*, 720 N.W.2d at 595.

The ULJ found that relator quit because he had been threatened by the husband of a subordinate employee after he warned her about using her cell phone at work and feared that the subordinate’s husband would physically assault him if he warned her about continued cell phone use. The finding that relator quit for this reason is amply supported by his testimony and the evidence in the record.

Relator argues that it was reasonable for him to quit his employment because the employer failed to take protective measures after he was threatened. After the threatening incident, respondent Estes was advised by the responding police officer to seek a no-trespass order so that the subordinate’s husband could be arrested if he returned to the property. A no-trespass order was issued two days after the incident. On the evening after the incident, the subordinate and her husband were told that the husband

was not welcome on company property. Respondent also suggested to the subordinate that she transfer to another position in which she would not be supervised by relator. Relator brought his concerns about the threatening incident to respondent, and respondent took steps to respond to relator's concerns. Relator worked with the subordinate the day after the incident, and she continued to use her cell phone in violation of company policy. Relator did not speak to her about this. Rather, the next morning, relator called his manager and left a voice message terminating his employment. Relator had not indicated to respondent that its response to his concerns was unsatisfactory, and relator therefore did not present respondent with "a reasonable opportunity to correct the adverse working conditions." Minn. Stat. § 268.095, subd. 3(c).

Relator also argues that he was constructively discharged because respondent did not address his concerns in accordance with his unexpressed wishes. Relator cites numerous cases addressing constructive discharge resulting from illegal discrimination under the Minnesota Human Rights Act, but these cases are inapplicable in the context of the statutory scheme of unemployment benefits. "There is no equitable or common law denial or allowance of unemployment benefits." Minn. Stat. § 268.069, subd. 3 (2010). We decline relator's invitation to apply the constructive-discharge doctrine here.

Affirmed.