

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0133**

Kurt Villa,
Relator,

vs.

Detect Alarm, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed October 29, 2012
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 28475433-3

Kurt Villa, Westbrook, Minnesota (pro se relator)

Mark F. Uphus, Melrose, Minnesota (for respondent Detect Alarm)

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

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and
Harten, Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

In this certiorari appeal, relator challenges the decision of the unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he quit his employment without good reason caused by his employer. Relator claims he had good reason to quit because his supervisor cut his hours and overtime pay. We affirm.

FACTS

Relator Kurt Villa began working for respondent, Detect Alarm, Inc. as a full-time service technician on March 1, 2010. In June 2010 relator was notified in writing that his initial 90-day probation period would be extended for an additional 90 days. The reasons for the probation extension were that relator was taking too much overtime pay without requesting permission and was not meeting his efficiency goals. Relator's probation period was again extended in March 2011 for the same reasons.

In May 2011 relator was notified that because he was unable to meet his efficiency goals, he would no longer be paid for his time commuting between his home and his first and last job of each workday. This change was consistent with the employer's policies as stated in the employee handbook, which relator acknowledged receiving. Relator's supervisor, Neil Marty, testified that due to relator's failure to meet his efficiency goals relator was causing the company to lose money. Nevertheless, relator refused to comply with the new timekeeping requirements and continued to request pay for his time commuting as well as overtime pay without first seeking permission from his supervisor.

Relator testified that the change in timekeeping policy resulted in a 40% wage decrease.

Relator quit his employment on August 17.

Relator applied for unemployment benefits and respondent Department of Employment and Economic Development determined he was ineligible to receive benefits because he voluntarily quit his employment. Relator appealed the decision, and after a telephone hearing, the ULJ found that relator lacked good reason to quit because the change in wages and hours resulted from relator's misconduct. Relator filed a request for reconsideration with the ULJ, who affirmed. This certiorari appeal follows.

D E C I S I O N

Relator admits that he quit his employment, but challenges the determination that he lacked a good reason to quit caused by the employer. A person who quits employment is generally disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). However, an applicant who quit because of a "good reason caused by the employer" may be eligible to receive unemployment benefits. *Id.*, subd. 1(1). A "good reason caused by the employer" is defined as "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). "A reason for quitting employment is not considered a good reason caused by the employer for quitting if the reason for quitting occurred because of the applicant's employment misconduct." *Id.*, subd. 3(d) (2010). Whether an employee had a good reason to quit is a

question of law to be reviewed de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012).

Relator contends that he had a good reason to quit because his employer cut his hours and overtime pay, resulting in a 40% decrease in wages. A significant wage decrease is generally considered good cause to quit. *Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 536, 235 N.W.2d 616, 617 (1975). However, this wage decrease resulted pursuant to a change in policy designed by relator's employer to remedy relator's failure to meet his efficiency goals. In a situation in which an employee is demoted for misconduct and then quits because of his demotion, the employee is not entitled to unemployment benefits because he would not have been entitled to benefits had he been discharged rather than demoted. *Goodwin v. BPS Guard Servs.*, 524 N.W.2d 28, 29 (Minn. App. 1994) (addressing a quit after demotion and pay decrease for three unreported absences). This is consistent with the purpose of state unemployment insurance, which is to "provide workers who are unemployed *through no fault of their own* a temporary partial wage replacement." Minn. Stat. § 268.03, subd. 1 (2010) (emphasis added).

Relator asserts that his conduct constituted mere inefficiency and therefore was not misconduct making him ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 6(b)(2) (2010) (exempting "conduct that was a consequence of the applicant's inefficiency or inadvertence" from definition of "employment misconduct"). We disagree. An employee commits employment misconduct when he ignores repeated warnings that his conduct fails to conform to the legitimate expectations of his employer. *Schmidgall v. Filmtec Corp.*, 664 N.W.2d 801, 806 (Minn. 2002). "[A]n employee's

decision to violate knowingly a reasonable policy of the employer is misconduct.” *Id.* Moreover, an employee who knowingly violates his employer’s timekeeping policy commits misconduct. *Riley v. Transport Corp. of Am.*, 462 N.W.2d 604, 607 (Minn. App. 1990) (citing *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233 (Minn. App. 1986); *Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660 (Minn. App. 1985)).

Here, the evidence shows that relator was aware of the policy change, but that he continued to complete his timesheets in violation of his employer’s policy. In addition, relator was repeatedly told that he needed to request permission to take overtime pay, but he frequently recorded overtime pay on his timesheets without first asking permission. Because relator’s failure to meet his efficiency goals resulted from his open defiance of his employer’s legitimate policies, relator committed employment misconduct.

In the alternative, relator contends that his case should be remanded for further testimony regarding the data underlying respondent’s efficiency determinations. This court may remand for further proceedings if the ULJ’s findings are “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d)(5) (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*, 644 N.W.2d 457, 464 (Minn. 2002) (citing *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 668 (Minn. 1984)). Here, the evidence shows that relator was repeatedly warned about his inefficiencies, that his employer’s business

records reflected a financial loss caused by relator's inefficiencies, and that relator was frequently unable to meet his monthly sales targets. Given that there is "more than a scintilla" of evidence to support the ULJ's decision that relator was not performing his job duties in compliance with his employer's policies there is no need to remand the case for further testimony on this issue.

Affirmed.