

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0909**

Loren Stoll,  
Respondent,

vs.

Brambilla's, Inc.,  
Relator,

Department of Employment and Economic Development,  
Respondent.

**Filed April 28, 2014  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 30818217-3

Loren Stoll, Shakopee, Minnesota (pro se respondent)

Phillip R. Krass, Rachel R. Lorentz, Malkerson Gunn Martin, LLP, Minneapolis,  
Minnesota (for relator)

Lee B. Nelson, Christine Hinrichs, St. Paul, Minnesota (for respondent department)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten,  
Judge.

## UNPUBLISHED OPINION

**ROSS**, Judge

Loren Stoll quit his sales job at Brambilla's, Inc., after 14 years. An unemployment law judge (ULJ) found that Brambilla's had reduced Stoll's sales commissions, denied him information necessary to calculate his commissions, and withheld his pay. The judge also found that other employees had physically threatened him, and she deemed Stoll eligible for unemployment benefits. Because complaining about the changes in his compensation before leaving is not a prerequisite to eligibility for benefits and because the ULJ correctly held that Stoll's decreased compensation constituted a good reason to quit, we affirm.

### FACTS

Loren Stoll worked for nearly 14 years as a recreational vehicle salesman for Brambilla's, Inc., before he quit in 2013. He applied for unemployment benefits and complained that a series of employer-caused events beginning in June 2012 compelled him to leave Brambilla's. The Department of Employment and Economic Development determined that he had quit for personal reasons and was ineligible for benefits. Stoll appealed administratively, and a ULJ reversed that decision after it heard testimony from Stoll, Brambilla's controller Roger Reinhart, owner Jack Brambilla, and office manager Michelle Brambilla.

Stoll testified at the hearing that coworkers twice threatened him. He said that finance and warranties manager Tommy Weller berated him for not listening. According to Stoll, Weller said that one day he would "get out [his] gloves and beat [Stoll] to the

ground until [he] listen[ed].” Stoll did not report the incident. Reinhart and Michelle Brambilla complained that Stoll left her alone with a difficult customer who has a mental illness. According to Stoll, Ms. Brambilla pounded her fists on the table and screamed that “if [she] couldn’t do it at the office [she] would come up to [Stoll’s] house and personally strangle [him].”

Stoll testified that Reinhart told him that he would no longer receive commission on selling warranties or finance plans. He also testified that Brambilla’s had recently altered his compensation in several ways. He said that he had initially earned a commission equivalent to 25% of net profit on every vehicle he sold and, for the previous seven or eight years, a flat fee of \$1,000 on old vehicles that Brambilla’s sold at a loss. Brambilla’s reduced the fee for selling old vehicles to \$500 in August 2012. When he asked Jack Brambilla about the change, Mr. Brambilla allegedly told him, “[W]e are not nice anymore.” For seven or eight years Stoll had also received a flat fee for every financing plan or extended warranty he sold, a fee Brambilla’s first reduced from \$100 to \$50 and then eliminated altogether in June 2012. Stoll also testified that his commission on sales of new recreational vehicles became unpredictable in June 2012. Brambilla’s began denying him access to the folders containing the financial data on each vehicle, so he could not calculate his commissions accurately. He testified that Brambilla’s then began shorting him on commissions and decreasing and withholding his pay. Stoll estimated that a sale in October 2012 profited Brambilla’s \$15,000 and should have resulted in a \$3,750 commission, but he received only \$500. He did not make any sales and did not receive any paychecks in the two months immediately before he quit.

Brambilla's witnesses gave a different account. Reinhart testified that Brambilla's had not changed the commissions rate but had started including details like repairs or service, reducing the profit and, consequently, the commission. He conceded that the flat fee on sales of old vehicles was reduced but said it had occurred several years earlier. He described the meeting with Stoll after the incident with the difficult customer as "heated" and said the attendees were "aggressively trying to get [Stoll] to understand" their concerns. Reinhart added that the company offered Stoll an electronic tablet to allow him to access commission-related information but that Stoll refused the offer. Michelle Brambilla testified that she was very angry with Stoll for leaving her alone with a "crazy guy" whom she feared. She also testified that Stoll had always been paid what he was owed. And she said that the \$1,000 fee schedule for selling old vehicles was part of a sales contest that had ended years earlier. Jack Brambilla denied Stoll's claim that he had told Stoll, "[W]e are not nice anymore."

The ULJ found that Brambilla's employees physically threatened Stoll during the June 2012 meetings. She also found that Brambilla's later denied Stoll access to the information necessary to calculate his commissions, failed to pay commissions to which he was entitled, cut his flat fee for sales of old vehicles in half, and paid him a \$500 commission on a sale when Stoll should have received \$3,750. The ULJ explained that she found Stoll's testimony more credible than the testimony of Brambilla's witnesses, which she found sometimes unresponsive to questions. The ULJ concluded that the conditions would have compelled an average, reasonable worker to quit. She determined

that Stoll quit for a good reason caused by his employer and was therefore eligible for unemployment benefits.

Brambilla's filed a request for reconsideration, challenging the ULJ's findings. Its submission included sales sheets purportedly showing that Stoll was fully paid and had access to the data necessary to calculate his commissions. The ULJ was not persuaded and affirmed her decision.

Brambilla's appeals by certiorari.

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

We may reverse or alter a ULJ's decision of eligibility for unemployment benefits if the decision, findings, inferences or conclusion contain errors of law, are not supported by substantial evidence on the record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7 (2012); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). We review the ULJ's findings of fact in the light most favorable to the decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). And we defer to the ULJ's determinations as to witness credibility. *Id.* We will affirm if substantial evidence supports the ULJ's decision. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

Brambilla's first contends that Stoll is ineligible for unemployment benefits because he did not complain to his employer before he quit. An employee subject to "adverse working conditions . . . must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before" the employee has a good reason to quit caused by the employer. Minn. Stat. § 268.095, subd. 3(c)

(2012). Employment *terms*, such as compensation and hours, are distinct from employment *conditions*, “such as the social and physical environment” in which the employee works. *Thao v. Command Ctr., Inc.*, 824 N.W.2d 1, 10–11 (Minn. App. 2012). The statute does not condition benefit eligibility on an employee’s prior report of changes in his *terms* of employment; it applies the reporting precondition only to employees who quit because of adverse working *conditions*. *Id.* at 11.

The ULJ found that Brambilla’s reduced Stoll’s commissions on sales of old vehicles, failed to pay commissions he had earned, and inhibited him from calculating commissions on sales. Brambilla’s conceded at oral argument on appeal that reducing Stoll’s commissions, failing to pay, and obscuring commissions data are actions that would affect terms of employment, not conditions of employment, and that the statute does not obligate an employee to have complained about them before becoming eligible for unemployment benefits. *See id.* at 10–11. It is true that, to qualify for benefits, Stoll was required to notify Brambilla’s about the alleged physical threats before quitting if he was to successfully rely solely on those threats as the reason he quit. But the ULJ’s analysis indicates that the threats were background events that soured Stoll’s relationship with his coworkers, not the impetus for his decision to quit. The ULJ based her eligibility decision on the change in Stoll’s compensation, not on the change in working conditions. Stoll’s failure to complain about changes in his workplace conditions therefore does not render him ineligible for unemployment benefits.

Brambilla’s next argues that the ULJ mistakenly concluded that Stoll was compelled to quit for a good reason for which Brambilla’s was responsible. Whether an

employee quit for a good reason caused by his employer is a legal question that we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). An employee has good reason to quit when he quits for “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.” Minn. Stat. § 268.095, subd. 3(a). A substantial reduction in hours or pay is a good reason for an employee to quit. *Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715, 723 (Minn. App. 2012). The extent of the reduction is important: a pay reduction of roughly 10% or less is generally not a good reason to quit, *Dachel v. Ortho Met, Inc.*, 528 N.W.2d 268, 270 (Minn. App. 1995), but a reduction of at least 19% generally is, *Danielson Mobil, Inc. v. Johnson*, 394 N.W.2d 251, 253 (Minn. App. 1986). An employee who quits due to reduced pay may be eligible for benefits even if he performs little to no work at the reduced wage. *Id.* at 252–53 (affirming eligibility after employer reduced wages “early” in month and employee quit the 11th of the month).

Brambilla’s insists that Stoll quit only because he was not making sales. We agree with Brambilla’s that the evidence might support that factual conclusion. But the ULJ found that Stoll quit for a different reason. She found that he quit because of the changes made to his compensation structure, and we will defer to the ULJ’s weighing of evidence and credibility. The ULJ expressly credited Stoll’s testimony and found that Brambilla’s had reduced his commission on sales of old inventory from \$1,000 to \$500 (effectively causing a 50% reduction), that Brambilla’s had begun unpredictably reducing Stoll’s

commissions, and that it became unreliable in paying commissions Stoll had earned. Although the supporting evidence is not undisputed or overwhelming, it exists and is substantial. The ULJ discredited the disputing explanations that Brambilla's offered, and she was entitled to believe one witness over several others. We are simply in no position to second-guess the express credibility finding under these circumstances.

The findings considered in the light most favorable to the ULJ's decision support the conclusion that Stoll quit because Brambilla's reduced his pay. We therefore affirm the ULJ's holding that Stoll is eligible for unemployment benefits.

**Affirmed.**