

No. A05-2248

State of Minnesota
In Court of Appeals

JOHN E. JASKOWIAK,

Relator,

vs.

CM CONSTRUCTION COMPANY INC.,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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I. LEGAL ISSUE

Under the law, a person who quits employment for other than a defined set of reasons is disqualified from receiving benefits. One of those reasons is that employment is unsuitable, provided the quit occurs within 30 days of starting employment. John Jaskowiak quit his employment within 30 days of beginning, but it was the same job at the same site where he had worked the previous summer. Is Jaskowiak disqualified from receiving benefits?

II. STATEMENT OF THE CASE

This case involves whether Relator John Jaskowiak is entitled to unemployment benefits. Jaskowiak established a benefit account with the Minnesota Department of Employment and Economic Development. A department adjudicator initially determined that Jaskowiak quit his employment within 30 days of starting, and did so because it was unsuitable. Therefore, the adjudicator found that he was not disqualified from receiving benefits. (D-1)¹ CM Construction appealed. A de novo hearing was held, at which CM Construction participated, but Jaskowiak did not. The unemployment law judge reversed the initial determination, concluding that the employment Jaskowiak had begun was not unsuitable, and that he was therefore disqualified. (Appendix to Department's Brief, A3-A6)

¹ Transcript references will be indicated as "T." Exhibits in the record will be "D" for the department, with the exhibit number following.

Jaskowiak filed a request for reconsideration to the unemployment law judge, who issued an order affirming the initial decision. (Appendix, A1-A2)

This matter is before the Minnesota Court of Appeals on a writ of certiorari obtained by Jaskowiak under Minn. Stat. §268.105, subd. 7(a) (2004 and Supp. 2005) and Minn. R. Civ. App. P. 115.

III. STATEMENT OF FACTS

Jaskowiak worked for CM Construction from June 14 through July 9 of 2004 on the second phase of a three-year project. (T.4) The project was located in Osseo, Minnesota at Osseo High School. (T.4) Jaskowiak lived in Backus, Minnesota, but during the time the construction was ongoing, he lived in a camping trailer near the job site. (T.5) It is not uncommon for construction workers to travel where the work is if they have trouble finding work near home. (T.6)

The following summer, CM contacted Jaskowiak again and offered him work on the final phase of the same project at the same location. (T.7) Jaskowiak accepted. (T.7) The first day Jaskowiak was scheduled to work, he arrived four hours late. (T.8) The second day, he was one hour late. (T.9) After that, he never came back to work. (T.9)

IV. ARGUMENT

A. SUMMARY OF ARGUMENT

Jaskowiak argues that he quit his employment because the work was unsuitable. However, it was the same job under the same conditions as work he

had done the previous summer. He agreed to return knowing what the conditions were, and his only argument that the work was unsuitable amounts to a claim that he had to stay home and do other work; namely, work on his own house. If that were the case, it would not affect the suitability of the work, but his availability to work. Work is not unsuitable simply because one has other obligations that conflict with that work. The job Jaskowiak quit was suitable for him; he is disqualified from receiving benefits.

B. STANDARD OF REVIEW

Effective for unemployment law judge decisions issued on and after June 25, 2005 that are directly reviewed by the Court of Appeals, the legislature restated the standard of review at Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005) as follows:

(d) The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may 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.

C. ARGUMENT FOR DISQUALIFICATION

An applicant who quits employment is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2004)² provides in pertinent part:

Subd. 1. **Quit.** An applicant who quit employment shall be disqualified from all unemployment benefits except when:

* * *

(3) the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant;

* * *

Jaskowiak claims in his brief that he quit his employment because a fire destroyed his home and he had to stay home and work on rebuilding and cleaning, particularly after his neighbors complained about fire ash that had not been removed. (Rel. Br. 1) There is nothing in the record to support this assertion, because Jaskowiak did not participate in the hearing. The factual assertions made in his brief cannot be considered.

If, however, that argument were considered, it simply means he was not available for work because he was busy with personal business. While this may be a personally compelling reason to turn down work, it not only does not render other employment unsuitable, it renders the applicant unavailable for work, presenting another reason he cannot collect unemployment benefits.

Jaskowiak accepted the same work on the same terms he had done work in

² Under Laws 2004, ch. 183, sec. 62, the 2004 amendments to Minn. Stat. § 268.095, subd. 1 applies.

the previous summer. Where he lived did not change; where the job site was located did not change. The only thing that changed, according to his own version of events, was that he did not want to go as far to work as he had the previous year, because he had other work to do at home. Again, this is not in the record, but assuming that it is true, it does not make work unsuitable that was suitable the previous summer and that the applicant volunteered to do again, knowing precisely what the terms and conditions of the employment would be and having experienced those terms and conditions before. The employment simply was not unsuitable.

Minnesota law provides that whether work is suitable does include consideration of the distance from the applicant's home to the job site. Minn. Stat. § 268.035, subd. 23a(a) (2004). But here, Jaskowiak had already demonstrated that the distance was reasonable by not only traveling it in the previous summer but agreeing to travel it again. His reason for turning it down was not that it became any farther away; only that he had other things to do that conflicted with the travel he would otherwise have been willing to undertake. Because neither his location nor the job site's location changed between the summers of 2004 and 2005, the employment cannot have gone from suitable in 2004 to unsuitable in 2005.

Jaskowiak also complains that he showed good cause for failing to attend the hearing. Under Minn. Stat. § 268.105, subd. 2(d) (2004 and Supp. 2005), this would require the unemployment law judge to set aside the findings of fact and decision and conduct an additional hearing. That same statutory provision requires

that the applicant have an opportunity to present a written statement to the unemployment law judge following filing of the request for reconsideration; it appears that Jaskowiak never submitted such a statement explaining why he did not appear for the hearing. The file includes only his initial request for reconsideration, which says he missed the hearing "by an honest mistake." (Return-4) There is nothing in the file to suggest he provided information to the unemployment law judge about any changes to his child visitation schedule. He does not explain in his brief how long it took to drop his child off or why this made it entirely impossible for him to participate in the hearing, and it does not explain why he did not call and ask to have the hearing reset. He claims to have called and never gotten through, but it is not clear why that would have occurred.

There is nothing in the record or documents in the file to support the notion that Jaskowiak was able to show good cause for missing the hearing, and the unemployment law judge properly chose not to order an additional evidentiary hearing on that basis.

V. CONCLUSION

The unemployment law judge correctly concluded that Jaskowiak quit his employment and that no statutory exception to disqualification applied. He therefore was disqualified from receiving benefits. The department asks that the Court affirm the agency decision.

Dated this 19th day of January, 2006.



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).