

No. A11-954

State of Minnesota
In Court of Appeals

JOHN STASSEN,

Relator,

vs.

LONE MOUNTAIN TRUCK LEASING, LLC,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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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).

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Legal Issue

Under the law, an individual who quits employment is generally ineligible for unemployment benefits. An employee is considered to have quit employment when the decision to end the employment was, at the time the employment ended, the employee's. John Stassen was a collections account manager at Lone Mountain Truck Leasing, LLC, and felt that his supervisors were no longer supporting him. One day wrote an email to his employer in which he offered to continue working while he transitioned out of Lone Mountain, wished them well, and said it had been a real trip. His employer accepted his resignation immediately. Did Stassen quit his employment? If so, does any exception to ineligibility apply?

Unemployment Law Judge Katrina Gulstad found Stassen quit his employment, and was ineligible for unemployment benefits because he did not fall under any exception to ineligibility. On reconsideration, ULJ Kaczorek affirmed.

Statement of the Case

A Department adjudicator determined that Stassen was eligible for benefits after he reported that he was discharged by Lone Mountain, and did not know why.¹ Under the statute, unemployment benefits were then paid to Stassen.² Lone Mountain appealed that determination, and ULJ Gulstad held a de novo hearing, in

¹ E-1(1). Transcript references will be indicated "T." Exhibits in the record will be "E-" with the number following.

² Minn. Stat. § 268.101, subd. 5, requiring benefits to be paid regardless of appeal period or any pending appeal.

which both Stassen and Lone Mountain participated. The ULJ found that Stassen had quit and that no exception to ineligibility applied.³ This resulted in an overpayment of benefits previously paid.⁴ Stassen filed a request for reconsideration with the ULJ; the Chief ULJ transferred the matter to ULJ Mary Kaczorek at Stassen's request, and she affirmed.⁵

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Stassen under Minn. Stat. § 268.105, subd. 7(a) (2010) and Minn. R. Civ. App. P. 115. The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁶ Unemployment benefits are paid from state funds, the unemployment insurance trust fund, not by an employer or employer funds.⁷ Because unemployment benefits are state funds, the Department is the primary responding party in this case.⁸ The Department does not represent the co-respondent in this proceeding, and this brief should not be considered advocacy for Lone Mountain.

Statement of Facts

John Stassen worked as a part-time account manager for Lone Mountain Truck Leasing from October 5, 2004, through May 26, 2010.⁹ He did collections,

³ Appendix to Department's Brief, A9-A14.

⁴ Minn. Stat. § 268.105, subd. 3a(b).

⁵ Appendix, A1-A8.

⁶ Minn. Stat. § 116J.401, subd. 1(18).

⁷ Minn. Stat. § 268.069, subd. 2.

⁸ Minn. Stat. § 268.105, subd. 7(e).

⁹ T. 21-23.

was paid by commission, and worked out of his home.¹⁰ In late 2009 and early 2010 Lone Mountain began to receive complaints from various customers that Stassen was being rude and overly aggressive during his collection calls.¹¹ In late December 2009, Stassen met with Lone Mountain owner Wayne Hoovestol and complained that his supervisor, Derenda Smith, was not supporting him in the face of these complains.¹² In January of 2010, human resources director Lynda Kuhn met with Stassen and told him that he needed to be more respectful and professional in his dealings with customers and coworkers.¹³ In early February, Kuhn sent Stassen a written final warning, stating that if he continued to behave disrespectfully he would be terminated.¹⁴

On May 26, 2010, a customer called supervisor Derenda Smith, complained that Stassen was rude, and asked to be transferred to a different collector.¹⁵ Stassen felt that the management at Lone Mountain were no longer supporting him, despite the fact that he believed that his performance as an employee was very good.¹⁶ Stassen wrote an email to Smith the same day, complaining that she handled the customer complaint poorly and unprofessionally.¹⁷ He went on to write:

¹⁰ T. 22, 28.

¹¹ T. 26-28.

¹² T. 39, 42-43

¹³ T. 38-39, 47-48

¹⁴ T. 25-26, 38, E-4.

¹⁵ T. 31.

¹⁶ T. 34.

¹⁷ T. 34.

Since Wayne has been more than fair with me for the 6 years or so that I've been in his employ, pls accept this e-mail as my assurance that I will be happy to continue in my capacity as long as he, Joe, and Andy would like so that there's no interruption or difficulty as I transition out of LMTL's employ.

If they would be comfortable with a decision to sever immediately, so be it.

While I have diligently and effectively met my responsibilities, including strict compliance with new company policies, for the entire time I've worked for Wayne's firms, there have been several matters in recent weeks between you and me that make continuing on extremely unpleasant.

Here's wishing Wayne, Joe, and Andy well – it has been a real trip!!

Jack¹⁸

After Kuhn received the email, she called Stassen to tell him that Lone Mountain was accepting his resignation.¹⁹ Stassen then attempted to rescind his resignation, but Lone Mountain refused.²⁰

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Stassen's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected

¹⁸ E-5, T. 45-46,

¹⁹ 42-43.

²⁰ 43-43.

by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.²¹

The Court of Appeals has stated on a number of occasions that whether and why an applicant quit employment are questions of fact for the ULJ to determine.²² The Supreme Court also held in *Stagg v. Vintage Place* that it views the ULJ's "factual findings in the light most favorable to the decision," and that it will not disturb the findings when the evidence substantially sustains them.²³ "Substantial evidence" is the relevant evidence that "a reasonable mind might accept as adequate to support a conclusion."²⁴ The Court of Appeals explained in *Skarhus v. Davannis* that it gives deference to the ULJ's credibility determinations.²⁵ In *Peppi v. Phyllis Wheatley Community Center*, the Court of Appeals reiterated that it reviews de novo the legal question of whether the applicant falls under one of the exceptions to ineligibility under Minn. Stat. § 268.095, subd. 1.²⁶

²¹ Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (2010).

²² *Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380, 382 (Minn. App. 1986); *Midland Electric Inc. v. Johnson*, 372 N.W. 2d 810, 812 (Minn. App. 1985).

²³ 796 N.W.2d 312, 315 (Minn. 2011) (citing *Jenkins v. Am. Express*, 721 N.W.2d 286, 289 (Minn. 2006)).

²⁴ *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

²⁵ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), review denied (Minn. Dec. 20, 2000)).

²⁶ 614 N.W. 2d 750, 752 (Minn. App. 2000).

In *Nichols v. Reliant Eng'g Mfg., Inc.*, the Court of Appeals made clear that whether an employee quit with a good reason caused by the employer is a legal question, which the Court reviews de novo.²⁷

Argument for Ineligibility

An applicant who quits employment is ineligible for all unemployment benefits unless he falls under a statutory exception to ineligibility. Minnesota statutes render Stassen ineligible for unemployment benefits because he quit employment, and does not fall under any statutory exception.

1. Stassen quit his employment.

This Court has held on multiple occasions that whether an applicant for benefits quit or was discharged is a question of fact.²⁸ Because substantial evidence in the record indicates that Stassen chose to end the employment even though Lone Mountain had continuing employment available to him, the ULJ's finding must be affirmed.

Subd. 2. Quit defined.

- (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.

* * *

Subd. 5. Discharge defined.

- (a) A discharge from employment occurs when any words or actions

²⁷ 720 N.W. 2d 590, 594 (Minn. App. 2006).

²⁸ *Nichols v. Reliant Eng. & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006); *Beyer*, 393 N.W. 2d at 382; *Midland*, 372 N.W. 2d at 812.

by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity...²⁹

This case turns on the email that Stassen sent to his employer on May 26, in which he offered to stay on as necessary while he transitioned out of employment, acknowledged that the employer might instead choose to sever his employment immediately, wished them well, and thanked them for the trip. This is not the type of communication that an employee sends when he wants to stay on in employment. The language of the email is clear and indisputable; Stassen is transitioning on, he wishes them well, and he'll stay for as long as they need in order to prevent "interruption or difficulty." Stassen made the choice to make the transition and move on; the choice, ultimately, was his own.

Whether or not an applicant quit is a factual question for the ULJ to decide, and she made all necessary and appropriate findings. Here, the ULJ concluded that, to the extent the parties' testimony differed, Lone Mountain's was more credible, because it was consistent and provided a more plausible sequence of events.³⁰ This is also supported by Stassen's own less-than-forthright interactions with the Department, in which he initially reported that he was discharged and did not know why, and at hearing refused to explain why he had not actually

²⁹ Minn. Stat. § 268.095, subs. 2 and 5 (2010).

³⁰ Return-3(3); Minn. Stat. § 268.105, subd. 1(c). That statute does not require that the ULJ use any specific terms in laying out her reasons for crediting a party's testimony.

disclosed all that he knew about his separation from employment.³¹ Moreover, she found, as a factual matter, that while Stassen had received warnings about his employment, Lone Mountain had ongoing employment available to him when he chose to send the email ending his employment. She also found that it was simply not plausible that Stassen could have sent that email without realizing that Lone Mountain would interpret it as him quitting employment.

Because the ULJ's credibility determinations must be given deference,³² and a preponderance of the evidence supports the ULJ's factual findings, they must be affirmed. Stassen quit his employment when he sent the email announcing his transition out of employment and wished them well.

2. Stassen does not fall under any statutory exception to ineligibility.

Stassen also does not fall under any other statutory exception to ineligibility. The statute reads:

Subd. 1. **Quit.** An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:

- (1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3;
- (2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that

³¹ T. 45.

³² See *Skarhus*, 721 N.W.2d 340 (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000)).

would otherwise be imposed under subdivision 10 for quitting the first employment;³³

* * *

Subd. 3. Good reason caused by the employer defined.

(a) A good reason caused by the employer for quitting is 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.

* * *

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

* * *

(g) The definition of a good reason caused by the employer for quitting employment provided by this subdivision is exclusive and no other definition applies.³⁴

The evidence shows that Stassen was dissatisfied with his employment because he felt that his supervisors were not supporting him in the face of mounting customer complaints. An employee has a good reason to quit caused by the employer only under a very limited set of circumstances. As the Supreme Court held in *Ferguson v. Dept. of Employment Services*, “[i]n order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical;

³³ Minn. Stat. § 268.095, subd. 1 (2010).

³⁴ Minn. Stat. § 268.095, subd. 3 (2010).

there must be some compulsion produced by extraneous and necessitous circumstances.”³⁵

Stassen may have had a good personal reason for quitting, if he was unhappy with the level of support he was receiving. But that is not enough under the statute. Stassen’s general complaints about supervisors siding with customers is simply not enough under the statute; these are the types of complaints faced by many employees in Minnesota, the vast majority of whom continue working. The statute assumes that employees will continue their employment while job hunting, or will seek new employment on their own dime, unless their working conditions are truly untenable. The statutory requirements cannot be overlooked or ignored, and there is no equitable entitlement to benefits.³⁶

3. Stassen’s hearing was procedurally sound.

Stassen received a fair and full hearing. First, Stassen complains that the employer appealed too late.³⁷ When Stassen applied for benefits, he reported that he was discharged, and did not know the reason why.³⁸ He was then determined eligible; unfortunately, the Department mailed the determination to an old address of the employer’s, despite the fact that it had updated its address in the Department’s system. Under Minn. Stat. § 268.101, subd. 2(f), determinations are

³⁵ 247 N.W.2d 895, 896 (Minn. 1976) (quoting 81 C.J.S., Social Security and Public Welfare, § 167).

³⁶ Minn. Stat. § 268.069, subd. 3 (2010).

³⁷ Appendix. A18-A20 and A15-A17.

³⁸ E-1.

final 20 days after sending; the time for appeal did not then begin to run, and Lone Mountain did not appeal until it learned of the determination from its third-party payroll and human services company.³⁹ While this has unfortunately resulted in a large overpayment, it is in part a result of Stassen's own failure to disclose all that he knew about his separation from employment, as he was required to do under Minn. Stat. § 268.101, subd. 1.

The ULJ asked him questions and allowed him to call a witness, cross-examine the employer's witnesses, and make a closing statement, properly assisting him as required under Minn. R. 3310.2921. Under Minn. R. 3310.2921, "[t]he judge should assist unrepresented parties in the presentation of evidence....The judge must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing. The judge must ensure that relevant facts are clearly and fully developed." Minn. R. 3310.2922 is also clear, though, that a ULJ "may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious." Here, the ULJ assisted Stassen, helping him to ask and answer questions, and ensuring that all of the relevant testimony about his working conditions and his resignation were fully developed. The ULJ also did not fail to notify Stassen of any burden of proof. Under Minn. R. 3310.2921, ULJs "must inform the parties of the statutory provisions on burdens of proof before the taking of testimony." The statute, though, no longer contains any provisions on burdens of proof. Instead, as the ULJ explained, under Minn. Stat. §

³⁹ E-2.

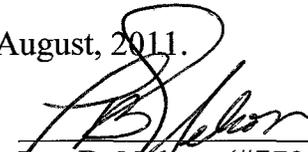
268.105, subd. 1, unemployment cases are decided under the preponderance of the evidence standard.⁴⁰ The ULJ developed the record, as required by Minn. Stat. § 268.105, subd. 1(b), and the hearing was procedurally fair and sound.

Conclusion

Unemployment Law Judges Katrina Gulstad and Mary Kaczorek correctly concluded that Stassen quit, and did not fall under any exception to ineligibility. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

⁴⁰ T. 10.

Dated this 29th day of August, 2011.



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