STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2149, A06-2150

Roderick Scroggins,
Relator,

vs.

SDH Services West, LLC,
Respondent (A06-2149),

United Parcel Services, Inc.,
Respondent (A06-2150),

Department of Employment and Economic Development,
Respondent.

Filed April 29, 2008
Affirmed
Minge, Judge

Department of Employment and Economic Development
File No. 945406

Roderick K. Scroggins, P.O. Box 21174, Eagan, MN 55121-0174 (pro se relator)

SDH Services West, LLC, P.O. Box 6170, Peabody, MA, 01961-6170 (respondent employer)

United Parcel Services, Inc., P.O. Box 283, St. Louis, MO 63166-0283 (respondent employer)

Lee B. Nelson, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (respondent department)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Pro se relator challenges the denial of his request for unemployment benefits in these consolidated-certiorari appeals following his separation from two different jobs. Relator contends that (a) he was forced to quit one full-time position due to a harassing work environment; and (b) he was wrongfully terminated from another part-time position following an extended illness. Because we conclude that the unemployment law judge (ULJ) did not abuse her discretion in finding that relator quit his full-time position without good reason caused by the employer and was terminated from his part-time position for employment misconduct, we affirm.

FACTS

I. Case No. A06-2149: Employment with SDH Services

Relator Roderick K. Scroggins worked full-time as a grill cook for SDH Services West, LLC (SDH) between June 2005 and February 3, 2006. In late January 2006, Scroggins's supervisor asked him to limit his visits with a female friend to breaks. The supervisor testified that she confronted Scroggins after his friend visited three to four times during one shift for 15-20 minutes each time. Although Scroggins acknowledged that his supervisor never referenced race or made discriminatory remarks when confronting him about the visits, Scroggins believed he was confronted about the visits because he is African American and his friend is a Caucasian female.

For the first time on February 3, 2006, Scroggins testified that he told the SDH general manager that he believed his supervisor was discriminatory. The general

manager testified that such a conversation did not occur. Because Scroggins believed the general manager was not responsive to his concern about discrimination, Scroggins gave the general manager his badge and quit. The ULJ determined that Scroggins quit without good reason attributable to SDH and disqualified him from receiving benefits. This certiorari appeal follows.

II. Case No. A06-2150: Employment with UPS.

Scroggins also worked part-time as a revenue recovery auditor for United Parcel Service, Inc. (UPS) from October 18, 2004, through April 16, 2006. Scroggins took a leave of absence from late February 2006 through mid-March 2006 due to anxiety and stress related to a harassment claim he filed against a supervisor. Following a union meeting with UPS, the claim was dismissed for insufficient evidence, and Scroggins returned to work on about March 20.

Scroggins left for a pre-approved vacation between April 3-7, 2006. Scroggins testified that he contracted an intestinal parasite. Scroggins was slated to return to work on April 10, but he called in and left a message to report his absence. Scroggins did not call back until Monday, April 17, to again report that he was too ill to work. Scroggins did not report to work, speak with a supervisor, request short-term disability paperwork, or talk to anyone at UPS directly until June 2006, when he called with questions about obtaining tuition reimbursement from the company. At that time, Scroggins was informed that he had been terminated effective April 10, 2006, for failure to speak with a supervisor or provide medical documentation regarding his absences.

The ULJ concluded that, because Scroggins made no effort to speak with anyone directly or request short-term disability during his two-month absence from UPS, he clearly displayed a serious violation of the standards of behavior UPS had a right to reasonably expect. The ULJ determined that Scroggins was discharged because of employment misconduct and therefore was disqualified from receiving unemployment benefits. This certiorari appeal followed and was consolidated with Case No. A06-2149.

D E C I S I O N

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is affected by error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (4)-(6) (2006). We view 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). We will not disturb factual findings that are reasonably supported by the record. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989). Whether an employee is disqualified from receiving unemployment benefits is a question of law, which this court reviews de novo. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

I.

The first issue is whether the ULJ erred in her determination that Scroggins quit his job at SDH without good reason caused by the employer.

An employee who quits cannot collect unemployment benefits unless the employee quits for a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2005). An employee quits when, at the time his or her employment ended, it was the employee's decision to end the employment. *Id.*, subd. 2(a) (2004). 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) (2004). The "reasonable worker" standard is objective and is applied to the average person rather than the ultra-sensitive. *See Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). Racial discrimination constitutes good cause to quit. *Marz v. Dep't of Employment Servs.*, 256 N.W.2d 287, 289 (Minn. 1977). However, before quitting is considered to be for good reason, an employee is required to "give the employer a reasonable opportunity to correct the adverse working conditions." Minn. Stat. § 268.095, subd. 3(c).

Scroggins claims that he was "forced to leave [SDH] . . . due to the undue stress" caused by conflict with his supervisor. The ULJ heard testimony that Scroggins was confronted by his supervisor about lengthy work-time conversations with visitors to the cafeteria. Scroggins, who is African American, contends that his supervisor held a racial motive for confronting him about conversations with his female, Caucasian friend. Scroggins contends that, on February 3, 2006, he "realized that the harassment was only going to get worse" when the supervisor's sister, a fellow employee in the cafeteria,

remarked that the "big black guy who came through the line got too much food." Scroggins brought his concerns to the general manager, then turned in his badge and quit because the general manager seemed nonresponsive.

The ULJ found no evidence that Scroggins was subjected to racial harassment or discrimination at SDH. The ULJ heard testimony from SDH management that Scroggins's friend would visit as often as three or four times per day for anywhere from 15 to 20 minutes at a time. Scroggins's supervisor testified that she asked Scroggins to limit the visits to work breaks. The supervisor denied making any racially derogatory remarks about Scroggins or any other SDH customer or employee, and Scroggins acknowledged that his supervisor never referenced race when discussing the issue of on-the-clock conversations with visitors.

The record supports the ULJ's determination that SDH did not create a harassing or racially-discriminatory workplace. The ULJ ultimately determined that Scroggins quit because he was upset after being confronted about on-the-clock conversations, and Scroggins felt that his supervisor's comments *may* have been racially motivated. While Scroggins may have had personal reasons for quitting as a result of disagreements with his supervisor and coworker, a good personal reason will not necessarily equal a good cause to quit for the purpose of collecting unemployment benefits. *Kehoe v. Minn. Dep't of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997). Similarly, when the quitting employee experiences irreconcilable differences with others at work or is simply frustrated or dissatisfied with his or her working conditions, the employee is not

necessarily eligible for benefits. *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986).

Because the record supports the ULJ's determination that Scroggins did not encounter racially adverse working conditions that would compel the average, reasonable worker to quit, we conclude that the ULJ did not err by finding Scroggins disqualified from receiving unemployment benefits and affirm in Case No. A06-2149.

II.

The second issue is whether the ULJ erred by concluding that Scroggins was terminated by UPS as a result of misconduct.

Whether an employee committed the specific act or acts alleged to be misconduct is a factual question, but whether the act itself constitutes employment misconduct is a question of law reviewed de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). When an employer discharges an employee for employment misconduct, the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4 (Supp. 2005). Employment misconduct is

> any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.
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> . . . .
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> [p]oor performance because of inability or incapacity . . . or absence because of illness or injury *with proper notice to the employer*, are not employment misconduct.

Minn. Stat. § 268.095, subd. 6(a) (2004) (emphasis added). This definition of employment misconduct is exclusive; no other definition applies. *Id.*, subd. 6(e). Employers have the right to expect their employees to work when they are scheduled. *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984). Absence from work under circumstances within the control of the employee is considered misconduct sufficient to deny benefits. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006); *see Prickett v. Circuit Sci., Inc.*, 518 N.W.2d 602, 605 (Minn. 1994) ("Absenteeism qualifies as misconduct"); *Jones v. Rosemount, Inc.*, 361 N.W.2d 118, 120 (Minn. App. 1985) (recognizing the employer's right to establish and enforce reasonable rules relating to absenteeism). But even if absenteeism is not willful or deliberate, it demonstrates a lack of concern for that employee's job if chronic and excessive. *Jones*, 361 N.W.2d at 120.

Here, after leaving for vacation on April 3, 2006, Scroggins did not return to work or actually speak directly with anyone at UPS for about two months until he called to inquire about a tuition reimbursement in June 2006. While absence due to illness may not be considered employment misconduct or within the employee's control, proper notice is still required. Minn. Stat. § 268.095, subd. 6(a). Scroggins stated that he left weekly voicemail messages about his continued incapacity. Scroggins testified that he believed it was permissible to continue notifying UPS of his absence without speaking to anyone directly and that he could simply provide a doctor's excuse to cover the days he was off when he returned to work.

However, the ULJ heard testimony from a human resources manager at UPS that the attendance policy requires employees to call within an hour before a shift to personally notify the immediate full-time supervisor of any absence. UPS acknowledged that it has no real employee handbook, but stated that the policy would have been clear to Scroggins following verbal messages from his supervisor, warnings, and information on the back of Scroggins's own attendance record. Even if some departments, such as Scroggins's revenue recovery department, used a voicemail system to report absences, the human resources manager testified that company policy required direct contact with a supervisor. Scroggins does not dispute that he failed to speak directly with anyone at UPS or provide medical documentation concerning his illness throughout a two-month recovery period. This is an extended period of time. Furthermore, the ULJ found that Scroggins was aware of the company's short-term disability policy because Scroggins had earlier requested a leave of absence and disability after he filed a harassment claim against a UPS supervisor in February 2006.

We conclude that because there is substantial evidence in the record supporting the ULJ's determination that Scroggins missed work shifts during the months of April through June without speaking directly to his supervisor or anyone else at UPS in violation of company policy, the ULJ did not err in determining that Scroggins's conduct represented a serious violation of the standards of behavior that UPS had a right to reasonably expect. We further conclude that the ULJ did not err in determining that Scroggins engaged in employment misconduct and affirm the order of the ULJ

disqualifying Scroggins from the receipt of unemployment benefits in Case No. A06-2150.

Affirmed.

Dated: