STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1100

Robert Conn,
Relator,

vs.

Meritcare,
Respondent,

Department of Employment and Economic Development,
Respondent

Filed April 13, 2010
Affirmed
Wright, Judge

Minnesota Department of Employment and Economic Development
File No. 22267167-3

Robert Conn, Moorhead, Minnesota (pro se relator)

Meritcare, c/o North Dakota Employment Security, Bismarck, North Dakota (respondent)

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

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Crippen, Judge.[*]

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

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

WRIGHT, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator is ineligible to receive unemployment benefits because he quit his employment without a good reason caused by the employer. We affirm.

FACTS

Relator Robert Conn was hired in October 2008 as a "float" courier for Meritcare Health System (Meritcare), working an average of 39 hours each week. The position involved filling in for drivers who were sick or otherwise unavailable and driving a minivan to deliver and pick up items in Fargo and the surrounding region. When he was hired, Conn was told that Meritcare had a total of fifteen city and eight regional routes and that he would be filling in "where they needed [him]." According to Conn, he understood that there would be a balance between city and regional routes and that no more than half of his routes would be in the city. Conn worked between 2:30 p.m. and 10:00 p.m., Wednesday through Friday, and between 8:00 a.m. and 8:00 p.m. every other weekend. There was little discussion about the hours Conn would work prior to his accepting the position. But Conn examined route schedules and felt that they were "workable."

In November 2008, Brandon Blanchard, Conn's supervisor, offered to change the city route that Conn was driving as a "float" to a permanent route, which would result in a reduction in hours from 80 to 64 per pay period. Conn accepted the permanent position. In January 2009, Conn and Blanchard discussed Conn moving to a regional

route because entering and exiting the van was physically demanding. Although Blanchard told Conn he was concerned that a regional route was more physically demanding than city routes, he promised to consider Conn for a regional route when one became available. Approximately one month later, Conn again talked with Blanchard about moving to a regional route, suggesting that Blanchard remove two other couriers from their regional routes or split another driver's route and give the regional portions to Conn. Blanchard declined, telling Conn that he would not remove other couriers from their routes and that the company preferred to keep the same courier on each route for consistency.

Blanchard ultimately gave Conn a floating regional route to Bemidji. With this arrangement, in addition to his 64-hour city route, Conn would fill in on the Bemidji route when the permanent driver was sick or otherwise unavailable. Conn drove this route one time before his resignation. Conn resigned because he believed he had been told when he was hired that his assignment to city routes would be temporary and would be followed by a transfer to a floating regional position within a few weeks. According to Conn, Meritcare's failure to follow through on this promise left him in a position that was too physically demanding.

Conn applied for unemployment benefits, which were denied because Conn quit his employment without a good reason caused by his employer. Conn appealed, and a telephonic hearing was held before a ULJ. The ULJ found that Conn had failed to demonstrate that he had a good reason to quit the employment and, therefore, is ineligible

to receive unemployment benefits. Following reconsideration, the ULJ affirmed his decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator 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." Minn. Stat. § 268.105, subd. 7(d) (2008).

An employee who voluntarily ends his or her employment is ineligible to receive unemployment benefits unless that employee "quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2008). A "good reason" is defined as an adverse action by the employer that is both "directly related to the employment and for which the employer is responsible" and significant enough to "compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (2008).

Conn argues that Meritcare promised him a floating regional position, and its failure to fulfill this promise constitutes a breach of his employment agreement and a good reason to quit attributable to the employer. When an employer breaches a term of an employment agreement, an employee has a "good reason" to quit, *see, e.g.*, *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552-53 (Minn. App. 2003) (employer breached promise

to give employee raise), *review denied* (Minn. Sept. 24, 2003), even when the agreement is based on an oral promise, *Krantz v. Loxtercamp Transp., Inc.*, 410 N.W.2d 24, 27 (Minn. App. 1987) (employer's breach of oral promise that employee would not have to work weekends); *Baker v. Fanny Farmer Candy Shops No. 154*, 394 N.W.2d 564, 566 (Minn. App. 1986) (employer's violation of oral understanding that employee would not have to work nights).

The ULJ found that, although Conn claimed that Meritcare changed the terms of the employment contract after he was hired, the preponderance of the evidence demonstrates that Conn agreed to the only change in the employment contract. And that change was "not so material that it would compel the average reasonable employee to quit and become unemployed." Because Meritcare did not materially breach the employment contract or treat Conn unreasonably, the ULJ concluded, Conn failed to establish that he had a good reason to quit caused by his employer.

Conn challenges several of the ULJ's findings, which Conn contends led to the ULJ's failure to recognize that Meritcare had not performed as it had agreed. Conn first challenges the ULJ's finding that Blanchard offered to make Conn the permanent driver on the Fargo route and that Conn agreed. Conn argues that he did not accept the route *permanently*; rather, he accepted it *indefinitely*. For the purpose of our analysis, this is a distinction without legal significance. Blanchard testified that he offered to change the route from a floating to a permanent route, that the change would be for an indefinite period of time, and that Conn agreed, which is reflected on the Associate Change Form

by the unchecked "temporary" designation. Thus, the evidence supports the ULJ's finding that Conn agreed to become the permanent driver on the Fargo route.

Conn next maintains that the ULJ erroneously found that Conn was initially assigned to drive the route in Fargo as a substitute for a driver who was ill. This finding is important, Conn contends, because Meritcare's difficulty in keeping this route filled presumably supplies a motive for Meritcare to use deception to get Conn to accept the position. Although the record reflects that Conn was driving the Fargo route because it was open, not because he was a substitute for a driver who was ill, this distinction does not affect the merit of the ULJ's finding that Meritcare did not unilaterally change the terms of the employment contract after Conn was hired. Conn does not dispute that he agreed to take the city route "indefinitely," with the understanding that regional routes may be added as they became available. Thus, regardless of whether the city route was difficult to fill, Conn accepted Blanchard's offer to make this a permanent route. Conn's agreement to accept the city route under the terms it was offered replaces any alleged agreement that was made when he was originally hired.

Conn also challenges the ULJ's finding that routes that were suitable to Conn were not available during the last several months of his employment. Conn contends that suitable work was available on two occasions, but it was given to others. Blanchard explained that Conn was not interested in the first opportunity, an on-call "stat" courier position, because he preferred a standardized route. And Blanchard declined to accept Conn's proposal to split the Grand Forks route because it would "bump" another courier out of his assigned route. The other route at issue involved trips to Bemidji, which

Blanchard determined to be unsuitable because it would interfere with Conn's current schedule. Because we defer to the ULJ's credibility determinations and to the ULJ's finding that Blanchard's version of events was more believable than Conn's, the ULJ's determination that there were no other suitable routes available for Conn is supported by the record.

Finally, Conn challenges the ULJ's finding that Meritcare did not change the terms of the contract after he was hired. Conn contends that Meritcare misrepresented the job by promising that Conn would not be required to cover city routes more than half of his work time. But this argument is contrary to his own testimony. Conn admitted that he was not promised a particular route and that he was told at the time he was hired that the position was a float position in which he would be required to "fill in where they needed [him]," including the city routes. Moreover, Blanchard testified that he told Conn when he was offered the position that the float courier is responsible for both city and regional routes, but most of the routes are in the city. The ULJ found this testimony to be credible. Therefore, the ULJ's finding that the only change in the terms of Conn's employment contract after he was hired was the change to which Conn agreed in November 2008 is supported by the record.

Accordingly, we affirm the ULJ's determination that Conn is not eligible to receive unemployment benefits because he did not quit his employment for a good reason caused by the employer.

Affirmed.