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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1729**

Tieng Lam,
Relator,

vs.

Da-Ran Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 3, 2010
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 22835323-3

Tieng Q. Lam, Oak Park, Minnesota (pro se relator)

Da-Ran Inc., Zimmerman, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Lansing, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Relator challenges the decision of an unemployment law judge (ULJ) that relator quit his employment without a good reason caused by the employer. Relator argues that (1) the ULJ overlooked major facts; (2) the ULJ relied on a letter from the Minnesota Department of Human Rights to ask relator whether he had been constructively discharged, but relator told the ULJ that he did not understand that term; and (3) relator did not quit but had been told to take his tools and go home. We affirm.

FACTS

Relator Tieng Q. Lam worked as a mechanic for respondent Da-Ran, Inc., from July 7, 2007, through June 11, 2009. Relator, who was the only nonwhite employee, testified that Don DeVries, relator's supervisor and co-owner of Da-Ran, yelled at him and made racist comments to him. Relator testified that in January 2009, DeVries "went off on me," swearing at relator about a repair that relator had performed.

Relator testified that he had performed the repair correctly and was frustrated, so he talked to John Nord about DeVries. Relator testified that he told Nord that DeVries swore at relator for no reason and made racist comments to him. Nord told relator that Nord would talk to Randy Hanson, Nord's father and a co-owner of Da-Ran. Nord testified that he immediately spoke to DeVries and that DeVries admitted yelling at relator but claimed that relator had performed the repair incorrectly. Nord testified that relator called Nord later that day, saying to drop the matter, that relator had just been frustrated and did not want to stir up trouble.

Relator testified that two or three weeks later, he spoke to Nord again about how relator believed that DeVries was treating him unfairly. Relator testified that Nord did not get back to him. Relator claimed that he did not follow up on his complaint because he was afraid of losing his job. Nord did not recall having any discussions with relator about DeVries between January 2009 and the day of relator's separation from employment.

Relator testified that on June 11, 2009, DeVries swore at him, relator responded by saying it was uncalled for, DeVries continued swearing and yelling, and relator then told DeVries that relator was recording the conversation. Nord testified that DeVries reported the incident to Nord, stating that relator was acting "all goofy" and recording DeVries. Nord testified that he called relator, who said that he quit, so Nord went to the shop to talk to relator. Nord testified that relator talked at length about how unfairly DeVries treated relator, Nord suggested that relator go home for the day to cool off and then call Nord sometime that afternoon, so they could "figure out something for tomorrow." Nord testified that relator responded that he would but that he wanted truck drivers to be present. The truck drivers were on the road out of state, so it was not possible for them to be present. Nord testified that he again told relator to call in the afternoon. Nord testified:

[Relator] then asked me, he then kept going on and on about [DeVries] again. And, and I told him again, well, we'll just figure this out later. We'll, we'll figure this out tomorrow, you know, go home, cool down. He then asked me, well, what do you want me to do with my tools? And then I told him, I said, you can, you can take them, you can roll them out of here, you can leave them here. I guess I

don't care. You know, you did tell me you quit, so maybe you should take them with you. And then I walked away and that was the end of it. And he never did call that afternoon, so, we just accepted his resignation.

Relator testified that he told Nord, "I quit, I can't take this anymore," and Nord told relator to go home, cool down, and they would have a meeting with DeVries the next day. Relator testified that the following then occurred:

I say [to Nord], I hope you're not going to be the same like the rest of them. So [Nord] exactly came up to me and asked me what did you just say? And I said, I'm saying is, I hope you're not going to be like the same, like the rest of them, because nobody listened to me, and nobody believed what I say, what's going on in shop. . . . [Nord] told me pack up your toolbox and get off my property right now. And I say, what are you saying, you're firing me, [Nord]? And [Nord] say no, I'm not firing you, you say you quit. I say, but I thought we gonna have a meeting with [DeVries] and sit down and discuss about this. And [Nord] say no, pack up your toolbox and get off my property.

Relator's testimony was corroborated by his wife's testimony. Relator's wife testified that Nord told relator to call later in the day about meeting the next day. She testified that relator then said:

I hope you're not going to be like the rest of them. [Nord] turned around and looked at [relator] and said, what'd you say to me? And [relator] told him the same thing, I hope you're not going to be like the rest of them. Because I don't feel like you're listening to me. And [Nord] said, you know what [relator], he said, because you won't shut up, and I've tried to give you a chance, he said, I want you to pack up your toolbox and leave my premises right now. And [relator] said, well, I thought [you] were going to work on this. That's what you just told me, he said. You know, I'm not quitting. I was just saying it because I was mad. [Nord] said, no, because you won't be quiet, I want you to pack up your toolbox and leave. [Relator] said, so you're firing me. He said, no, you

told me you quit three times on the phone. Pack up your stuff and leave.

Relator filed a claim for unemployment benefits with respondent Department of Employment and Economic Development. A department adjudicator determined that relator quit employment without a good reason caused by the employer and, therefore, was ineligible for unemployment benefits. Relator appealed to a ULJ. Following an evidentiary hearing, by findings of fact and decision issued July 29, 2009, the ULJ determined that relator voluntarily quit employment without a good reason caused by his employer and, therefore, was ineligible for unemployment benefits. Relator filed a request for reconsideration. The ULJ affirmed the July 29, 2009 decision. This certiorari appeal followed.

D E C I S I O N

This court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law," "unsupported by substantial evidence in view of the entire record as submitted," or "arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2008).

Subject to certain exceptions, applicants who quit employment are ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception is when an applicant quits for a good reason caused by the employer. *Id.*, subd. 1(1). Minn. Stat. § 268.095, subd. 3 (2008), states:

(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.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(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.

“We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). The reason an individual quit employment is a fact question for the ULJ to determine. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Good cause attributable to the employer

may be established if the employee has been subjected to harassment on the job and can demonstrate that he gave his employer notice of the harassment and an opportunity to correct the problem. Then, if the employee is provided with the expectation of assistance from his employer in eliminating the harassment, the employee must continue to apprise the employer of additional harassment.

Tru-Stone Corp. v. Gutzkow, 400 N.W.2d 836, 838 (Minn. App. 1987) (quotations omitted).

Relator argues that the ULJ overlooked the fact that he complained to Nord about DeVries's attitude toward relator. But in the order on reconsideration, affirming the initial order, the ULJ found:

[Relator] testified that he complained to Nord about DeVries in January 2009. The evidence shows that Nord told [relator] that he would look into his concerns before [relator] told Nord that Nord should not pursue the matter. The evidence shows that [relator] complained again on June 11, 2009. This time, Nord expressed a willingness to meet with [relator] and DeVries and discuss [relator's] concerns. [Relator] did not meet with Nord for these discussions, but walked off the job. The unemployment law judge finds that [relator] retracted his January 2009 complaint and failed to give the employer a reasonable opportunity to address his June 11, 2009 complaint.

Substantial evidence supports the ULJ's findings that relator made two complaints to Nord, retracted the first complaint, and did not give the employer a reasonable opportunity to address the June 11, 2009 complaint. The January 2009 complaint was about DeVries being angry about a repair that relator had performed, and Nord testified that relator called later the same day and told Nord to drop the matter because relator had just been frustrated. Although relator testified that he spoke to Nord about DeVries two or three weeks later, Nord did not recall having any discussions with relator about DeVries between January 2009 and June 11, 2009. Because relator retracted his January 2009 complaint and did not give the employer a reasonable opportunity to address the June 11, 2009 complaint, the ULJ properly concluded that relator did not have a good

reason attributable to the employer for quitting employment. *See Gutzkow*, 400 N.W.2d at 839 (affirming determination that employee had good cause attributable to employer for quitting employment when employee reported harassment and supervisor failed to respond to situation). We note that the conduct alleged by relator may have provided relator with good cause for quitting if relator had given the employer a reasonable opportunity to address the situation. *See Marz v. Dep't of Employment Servs.*, 256 N.W.2d 287, 289 (Minn. 1977).

Relator argues that he did not understand the ULJ's questions about whether relator used the term "constructive discharge" when he spoke to Nord on June 11, 2009. When the ULJ first asked whether relator used that term, relator replied, "I don't understand it." Referring to a complaint that relator had filed with the Minnesota Department of Human Rights, the ULJ directed relator's attention to relator's use of the term in the complaint. The following questioning about what relator told Nord on June 11 then took place:

Q: You did not use that term?

A: No, I did not. I did not repeated saying I quit?

Q: But I'm not asking if you said you quit, I'm asking if you used the term constructively discharged?

A: No, I did not.

Q: So why is that in [the complaint]? You said you told him that.

A: When he called back to the shop, and I did say, I did say, I quit, so he came down to the shop. And he discussed it with me.

....

Q: Okay. [The complaint] says, because I was so upset, I also told [Nord] that I was constructively discharging my employment. So, if you didn't use that term, why did you put

the sentence into this statement to the Department of Human Rights?

A: I don't know the term with that, but, I just used, I did say, and then my wife, you know, helped me type it up and, you know, just kind of used a different term on it, so, that's why I'm a little bit, confusing, you know.

Relator's testimony supports the ULJ's finding that relator, with his wife's help, reported to the Human Rights Department "that he was forced to resign, or was constructively discharged, due to harassment and the employer's failure to address his concerns."

Citing relator's testimony that Nord told him to pack his toolbox and get off the property, relator argues that the evidence does not support the ULJ's finding that relator walked off the job or quit. But relator's testimony was contradicted by Nord's, and the ULJ acknowledged relator's testimony and that it was corroborated by relator's wife's testimony but specifically found Nord's testimony more credible. In the resolution of conflicting testimony or the assessment of credibility, we defer to the ULJ. *Skarhus*, 721 N.W.2d at 344. Moreover, even accepting relator's testimony, relator had already quit before Nord told him to pack his toolbox and leave the property.

Affirmed.