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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-902**

Ronnie Epps,
Relator,

vs.

Express Employment Professionals,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 15, 2011
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 24348868-3

Ronnie Epps, Minneapolis, Minnesota (pro se relator)

Express Employment Professionals, Oklahoma City, Oklahoma (respondent)

Lee B. Nelson, Christina Altavilla, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent-department)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits because he quit his employment. Because there is substantial evidence in the record to support the ULJ's decision, we affirm.

FACTS

Relator Ronnie Epps worked full-time as a packing helper for respondent Express Employment Professionals from November 11, 2008, to May 15, 2009. Relator left a voice message with his employer on May 17, 2009, stating that he would be absent from work the following day. Relator had been involved in a domestic dispute and was incarcerated from May 17 to 21, 2009. Relator asked his roommate to inform the employer that he was in jail; instead, the roommate told the employer that relator moved to Wisconsin. The employer left a voice message with relator regarding his paycheck on May 22, 2009; relator never responded.

On June 1, 2009, relator contacted the employer to ask to return to work. The employer informed relator that it had replaced him on his current assignment but would "put him down as available" for another assignment. Relator testified that this phone conversation took place on May 21, 2009, not June 1.

Relator applied for and began receiving unemployment benefits. On February 5, 2010, respondent Minnesota Department of Employment and Economic Development (DEED) determined that relator is ineligible for benefits. Relator appealed the determination, and a ULJ held a telephone hearing at which relator and the employer

testified. The ULJ issued a decision on March 2, 2010, concluding that relator is ineligible for benefits because he quit employment not for a good reason caused by his employer. Relator requested reconsideration and asked to subpoena the employer's phone records in order to resolve the discrepancy about the date on which relator first contacted his employer after his incarceration. On April 26, 2010, the ULJ affirmed the decision and denied relator's request to subpoena phone records. Relator appeals.

DECISION

This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008) (articulating reasons for remand, reversal, or modification). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (Supp. 2009). The ULJ found that relator made no contact with his employer between May 17, 2009, when he left the voice message regarding his incarceration, and June 1, 2009, when he called and asked to return to work. The ULJ concluded that relator quit his employment.

The record indicates that relator was absent from work on May 18, 19, 20, and 21, 2009, because he was incarcerated. He informed the employer on May 17, 2009, that he

would not be at work on May 18, 2009. Shortly thereafter, relator's roommate informed the employer that relator moved to Wisconsin. Relator did not notify the employer of any other anticipated absences. Finally, the employer received no response from relator after leaving a voice message on May 21, 2009, about his paycheck.

Based on these facts, we conclude relator abandoned his job. The decision to end the employment was solely relator's insofar as he did not go to work or explain his absences in advance. *See* Minn. Stat. § 268.095, subd. 2(a). The ULJ did not err by concluding that relator quit his employment and is therefore ineligible for unemployment benefits. *See Smith v. Am. Indian Chem. Dependency Diversion Project*, 343 N.W.2d 43, 44 (Minn. App. 1984) (affirming disqualification for benefits due to three-day unexcused absence from work caused by applicant's incarceration); *cf. Souder v. Ziegler, Inc.*, 424 N.W.2d 834, 836 (Minn. App. 1988) (finding employee quit employment by leaving employer's premises and failing thereafter to report to work).

Relator insists that he contacted his employer earlier than June 1, 2009. The ULJ heard conflicting testimony regarding the date on which relator reestablished contact with the employer: relator testified that he called the employer on May 21, 2009; the employer testified that relator made no contact until June 1, 2009. The ULJ discredited relator's testimony, finding that relator was "vague regarding dates" and that the testimony from the employer's representative "describe[d] a more likely chain of events." These findings constitute a credibility determination, which is "the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Moreover, relator's own testimony reveals that regardless of the date on which he contacted his employer, the decision to reassign his position had already been made. Relator testified that by May 21, 2009, when he allegedly contacted his employer, his employer had filled relator's assignment. So on either May 21 or June 1, 2009, the employer concluded that relator was not returning to work and his position needed to be refilled. The facts demonstrate that this conclusion was reasonable: relator had been absent from work for three days and provided no notice of his absences for the last two days. Further, relator's roommate told the employer that relator had moved to Wisconsin. Relator's argument that he called his employer earlier than June 1, 2009, does not affect our conclusion that the ULJ properly determined that relator quit his employment.

Relator also argues that the ULJ erred by denying his request to subpoena phone records regarding the date on which he contacted his employer to ask to return to work. A ULJ is to conduct an evidentiary hearing "as an evidence gathering inquiry" and not an adversarial proceeding. *See* Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). The ULJ "must ensure that all relevant facts are clearly and fully developed." *Id.* The ULJ has the authority to issue subpoenas to compel the attendance of witnesses. *Id.*, subd. 4 (2008). A ULJ must explain at the beginning of the hearing "that the applicant has the right to request that the hearing be rescheduled so that documents or witnesses can be subpoenaed." *Id.*, subd. 1(b). In addition, the ULJ must give full consideration to a request for a subpoena. *Id.*, subd. 4. However, a ULJ may refuse to issue a subpoena if the "documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." Minn. R. 3310.2914, subp. 1 (2009).

In denying relator's request for a subpoena, the ULJ observed that relator did not request a subpoena during the evidentiary hearing on February 24, 2009, even though there was a conflict in the testimony regarding the date on which he contacted his employer. The ULJ also expressed doubt as to whether the record would show whether relator contacted the employer during the period at issue. The record reflects that the ULJ explained at the outset of the hearing that relator and the employer had the right to request that the hearing be rescheduled in order to subpoena documents or witnesses. Relator did not make any request regarding the employer's phone records at that time. More importantly, and as explained above, it is irrelevant whether relator contacted the employer on May 21, 2009, or June 1, 2009. By the time relator made contact, the employer had acted upon its reasonable belief that relator had abandoned his job by refilling his assignment with another employee. As a result, the ULJ did not err by denying relator's request for a subpoena.

Affirmed.