STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1088

David Taber,
Relator,

vs.

Standard Heating & Air Conditioning, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 12, 2011
Affirmed in part, reversed in part, and remanded
Collins, Judge[*]

Department of Employment and Economic Development
File No. 24926076-3

Marshall H. Tanick, Teresa J. Ayling, Mansfield, Tanick & Cohen, P.A., Minneapolis, Minnesota (for relator)

Standard Heating & Air Conditioning, Inc., Minneapolis, Minnesota (respondent employer)

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

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

Considered and decided by Wright, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

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

COLLINS, Judge

In this certiorari appeal, relator David Taber challenges the decision of the unemployment law judge (ULJ) that he quit employment without a good reason attributable to his employer and, thus, is ineligible to receive unemployment benefits. We affirm in part, reverse in part, and remand.

FACTS

Taber began working as a customer-service manager at Standard Heating & Air Conditioning, Inc. in May 2008. Standard paid him $63,000 to $66,000 per year, plus a bonus. Taber's department sold preventative-maintenance agreements (PMAs). Under a PMA, a Standard technician services a customer's heating and cooling equipment three times annually for $200. Taber supervised the company's technicians, who sold PMAs to customers. Standard also marketed PMAs through mail advertisements. The company held about 2,800 PMAs when Taber joined the company in 2008 and about 3,000 when he left in 2010.

In the fourth quarter of 2009, Standard's president Troy Gregory told Taber he might be terminated if he did not sell more PMAs. Gregory repeated this message to Taber three times during the first quarter of 2010. Gregory told Taber he wanted him to double the number of PMAs to 6,000. Taber testified that doubling the PMAs was "pie-in-the-sky," and that the company did not approach that number during Taber's tenure.

On March 1, 2010, Taber met with Gregory and Melissa Lukan, a human resources representative at Standard. Gregory presented Taber with job-related "options," including that Taber "could be walked out today" or that he could remain employed for a "transition period" during which the company could find a replacement and Taber could find another job. Lukan testified that, after Gregory presented the two options, Taber stated that he would resign. Lukan testified that Standard did not seek to leave Taber "high and dry," so the company offered him a 30- to 45-day period to allow him to obtain other employment and enable the company to hire his replacement.

Taber submitted a letter of resignation that day. The letter generally outlined the details of the 30- to 45-day period and stated that Taber would continue to work at Standard during that transition period. Taber testified that he resigned because he "was in fear of being released due to [an] ongoing personal conflict with [his] boss and also [he] believe[d] that [he] was going to be released . . . at some point . . . pretty soon down the road."

On March 19, Standard informed Taber that the company considered his resignation immediately effective. Lukan testified that Standard did not allow Taber to work any longer because he missed a significant amount of work between March 1 and March 19, working only two-and-a-half to three days a week. Lukan also testified that Taber missed work "for reasons other than seeking other employment."

Taber applied for unemployment benefits. The Minnesota Department of Employment and Economic Development determined that Taber was ineligible to receive unemployment benefits because he quit his job when he "was notified of discharge or

possible discharge in the future." Taber appealed the determination, and a ULJ held a telephonic evidentiary hearing at which Taber and Lukan testified.

The ULJ found that Taber quit his job effective April 15, 2010, 45 days after the meeting with Gregory and Lukan, and that Taber did not have a good reason to quit. The ULJ also found that Standard discharged Taber on March 19 despite his approved absences to look for another job, which the ULJ found did not constitute employment misconduct. The ULJ made two determinations. First, Taber is eligible to receive unemployment benefits between March 19 and April 15 because Standard had discharged him, and, second, Taber is ineligible to receive unemployment benefits after April 15 because his notice of quit had been effective that day.

Taber filed a request for reconsideration, and the ULJ affirmed the determination. 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). We review a 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). Whether an employee quit or

was discharged is a question of fact. *Midland Electric, Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

I

Taber first argues that the ULJ erred by finding that he quit his job and, thus, is ineligible to receive unemployment benefits after April 15. He contends that Standard discharged him during the meeting with Gregory and Lukan because he was given only two options, both of which resulted in him being fired.

An employee who quit employment is ineligible to receive unemployment benefits unless he quit for a good reason attributable to the employer. Minn. Stat. § 268.095, subd. 1(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." Minn. Stat. § 268.095, subd. 2(a) (Supp. 2009). The ULJ determined that Taber is ineligible to receive unemployment benefits after April 15 because he quit as of that date and was not discharged. As support for the determination, the ULJ made several findings: first, during the March 1 meeting, "Gregory informed Taber that he could be walked out today or they could work out a transition period"; second, Taber thought he had the option of continuing employment if he committed to selling more PMAs; third, Taber quit because he feared being fired, he felt cheated out of bonus money, and he believed Standard was a hostile work environment; and fourth, Taber submitted a resignation letter on March 1 that he would work no longer than April 15.

Substantial evidence in the record supports these findings that Taber quit and was not discharged. Taber's resignation letter demonstrates that the decision to end

employment was Taber's alone. *See* Minn. Stat. § 268.095, subd. 2(a). Lukan testified that Taber offered to resign, and Taber did not dispute this testimony. Similarly, in *Seacrist v. City of Cottage Grove*, we concluded that a police sergeant's termination was voluntary. 344 N.W.2d 889, 892 (Minn. App. 1984). We recognized certain facts as significant in that determination, including that the sergeant acted as if he voluntarily resigned, his resignation letter was unequivocal, and he did not question that he resigned until he was not hired by another employer and was ineligible to receive unemployment benefits. *Id.*

As in *Seacrist*, the record here demonstrates that Taber acted as though he resigned from his job. Taber testified repeatedly that he left Standard because he resigned. Further, Taber's resignation letter was unequivocal. Although a copy of the letter is not in the record, Taber's application for unemployment benefits appears to quote the letter: "Out of all the options that we discussed, I am feeling led to take the resignation option. As we discussed, we are looking at a 30 to 45 day timeframe for you to hire a replacement and for me to seek employment elsewhere." Taber argues that Standard "mandated" that he submit a resignation letter, so the decision to resign was not his alone. But the record contains no evidence to support this argument.

Further, Taber's testimony reveals that he thought he had the option of continuing to work at Standard if he committed to selling more PMAs, but he quit instead. Gregory previously requested that Taber increase the number of PMAs to 6,000, but Taber believed it was impossible to sell that many PMAs. Taber testified that he thought during the March 1 meeting that Gregory "was going to *again* try to get [him] to commit to . . . a

minimum [of] 6,000 PMAs." Taber testified that Gregory's request to sell 6,000 PMAs had "scared" him and made him "greatly concerned." But Lukan testified that there was no discussion about increasing PMA sales at the meeting because Taber offered his resignation in response to the first two options Gregory presented. Taber did not dispute Lukan's testimony.

Our conclusion that the ULJ correctly ruled that Taber quit also is consistent with *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355 (Minn. App. 1983). In *Ramirez*, a manager told an employee that he would seek his discharge after the employee had been warned about repeatedly showing up late for work. *Id.* at 356. Before the manager could discharge the employee, the employee resigned so he would not have a discharge on his work record. *Id.* We determined that the employee quit because the employer had made no formal decision to discharge the employee before he resigned, and the employer had not told the employee he was discharged. *Id.* at 357. Further, the employer had not asked for the employee's resignation, and the employee testified that he chose to resign to protect his work record. *Id.* at 357-58.

Similar to *Ramirez*, the record here contains no evidence that Standard told Taber he was discharged or that the company asked for Taber's resignation at any point, including during the March 1 meeting. Further, Taber testified that he orally resigned during the meeting and offered a resignation letter later that day because he feared being fired and he wanted to "save face" and "make it easier for him to find other work."

Taber attempts to distinguish *Ramirez* and *Seacrist* on the ground that the cases involved only "speculation that the employee might be discharged," whereas Taber

contends that he faced "the absolute certainty of discharge." We disagree. Taber's testimony implies that he believed he could remain employed if he committed to doubling the number of PMAs. Thus, the record does not support Taber's argument that he faced "the absolute certainty of discharge."

Therefore, the ULJ did not err by finding that Taber gave notice that he would quit his employment as of April 15 at Standard because substantial evidence supports the finding.

II

Taber argues in the alternative that, even if he is deemed to have quit, the ULJ erred by finding that he quit without a good reason, and, thus, was ineligible to receive unemployment benefits after April 15. An employee who quits employment is ineligible to receive unemployment benefits unless the employee quit because of a good reason attributable to the employer. Minn. Stat. § 268.095, subd. 1(1). A good reason 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." *Id.*, subd. 3(a) (2008). If subjected to adverse working conditions by the employer, the employee must complain to the employer and give it reasonable opportunity to correct the adverse conditions before they will be considered good reason to quit. Minn. Stat. § 268.095, subd. 3(c) (2008). *See Baker v. Fanny Farmer Candy Shops No. 154*, 394 N.W.2d 564, 567 (Minn. App. 1986). We review whether an

employee had a good reason to quit under a de novo standard of review. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

The ULJ found that Taber quit "because he feared being fired, he did not feel the bonus payment for 2009 was correct and he felt that [Standard] was a hostile work environment." The ULJ determined that Taber quit without a good reason attributable to Standard. The ULJ reasoned that Taber had not been subjected to a hostile work environment, but the ULJ made no specific determinations related to Taber's contentions that his 2009 bonus amount was incorrect or that Standard's goal to increase the PMA sales was unreasonable. On appeal, Taber makes three arguments why he had a good reason to quit attributable to Standard. He does not dispute the ULJ's determination related to his claim that he quit because Standard was a hostile work environment.

First, Taber asserts that he had a good reason to quit because Standard's demand that he double the number of PMAs was unreasonable. As support for his argument, Taber cites *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978), for the proposition that an employee has good reason to quit where an employer "made unreasonable demands of employee that no one person could be expected to meet." *Zepp* does not support Taber's argument. In *Zepp*, the supreme court observed that because the employer increased the employee's job duties, his work hours had more than doubled before he quit. 272 N.W.2d at 263. Taber did not testify that he worked more hours because of Standard's demand to increase PMA sales. Taber's testimony related only to his opinion that doubling sales from 3,000 to a "pie-in-the-sky" 6,000 would not be possible.

Further, *Porrazzo v. Nabisco, Inc.*, a subsequent case in which this court applied *Zepp* to conclude that an employee had good reason to quit because of his employer's unreasonable demands, involves facts far different from this case. 360 N.W.2d 662, 663 (Minn. App. 1985). In *Porrazzo*, we determined that the employer subjected the employee to harsh conditions, including assigning him to a second shift that "substantially" increased his work hours, failing to pay the employee for all the overtime he was required to work, and subjecting the employee to criticism and harassment and denying his requests for vacation time. *Id.* Taber has not asserted that any similar facts existed during his employment at Standard. In sum, Standard's demand that Taber increase the number of PMAs did not provide him with a good reason to quit.

Second, Taber argues that he had good reason to quit because Standard breached an employment agreement to allow him time off work to find a new job. This argument is without merit. Taber submitted his resignation letter and gave notice that he would quit on March 1, effective April 15, but Standard did not discharge him for taking time off from work until March 19. Thus, Taber's notice that he would quit could not have quit in response to the discharge because Standard's action occurred later in time.

Third, and finally, Taber argues that he had good reason to quit because Standard breached an employment agreement to pay him a full year's bonus for 2008. An employee has good reason to quit when an employer breaches an employment agreement, even if the agreement was only an oral promise. *See Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552-53 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003).

Taber testified that Gregory told him in 2008 that he would receive a bonus in 2009 as if he worked the entire 2008 year, even though he would have worked only part of the year. But when Taber asked Gregory in 2009 why his bonus payment was so small, Taber testified that Gregory replied that it was because Taber had not worked the entire 2008 year. Lukan did not respond to Taber's testimony on this point.

The ULJ found that Taber testified that he felt his 2009 bonus amount was incorrect, but the ULJ did not analyze Taber's claim and made no explicit determination of the claim. Accordingly, we reverse and remand to the ULJ for further proceedings to develop the record, make findings, and conclude whether Standard breached the agreement related to Taber's bonus for 2008, and, if so, whether the breach provided Taber a good reason to quit attributable to Standard.

Therefore, we affirm the ULJ's determination that Taber did not have a good reason to quit attributable to Standard because of Gregory's demand to increase the number of PMAs or because the company breached an agreement to allow Taber time off work to find a new job. But because the ULJ failed to develop the record and make a determination related to Taber's claim that Standard breached an agreement to pay him a bonus for the entire 2008 year, we reverse and remand to the ULJ for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.