**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-1276**

Arza Palmer,
Relator,

vs.

Coborn's, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 5, 2011**
**Affirmed**
**Lansing, Judge**

Department of Employment and Economic Development
File No. 23751909-3

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Arza Palmer, Owatonna, Minnesota (pro se relator)

Coborn's Inc., St. Cloud, Minnesota (respondent)

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

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

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

**LANSING**, Judge

Arza Palmer appeals, by writ of certiorari, from an unemployment law judge's determination that he is ineligible for unemployment benefits. Because we determine that substantial evidence supports the conclusion that Palmer quit his employment and no exceptions to ineligibility apply, we affirm.

## F A C T S

Coborn's Inc. employed Arza Palmer from March 1998 through February 5, 2009, as an inventory stocker in its grocery-store operation. Beginning in the fall of 2007, Palmer was not assigned to some of the shifts that he had worked in the past and, as a result, he had fewer work hours. Palmer, who was a part-time employee, worked an average of twenty-seven-and-a-half hours a week in 2007 and earned a total of $18,015. In 2008 he averaged twenty-six hours a week and earned a total of $17,048.

In the first week of February 2009, Palmer fell outside a bank and sustained an injury unrelated to his work. After February 5, 2009, he stopped reporting to work and Coborn's efforts to contact him were unsuccessful. Coborn's was aware that Palmer was having physical issues related to his fall, but Palmer did not formally inform Coborn's until the end of July.

In a July 29, 2009 letter Palmer notified Coborn's personnel department that he was terminating his employment effective July 26, 2009. He stated that his termination was "due to disability (not store related) and retirement." He also said that the injuries he sustained when he fell in February prevented him from working.

Palmer applied for unemployment benefits in September 2009. The Minnesota Department of Employment and Economic Benefits determined that he was ineligible, and Palmer requested an evidentiary hearing. At the hearing Palmer did not dispute that he had quit his employment. He testified, consistent with his July letter, that he terminated his employment because he was physically unable to perform his job after he fell in February. Palmer also testified that he believed that Coborn's treated him unfairly by reducing his hours beginning in the fall of 2007. A human-resources manager from Coborn's testified that Coborn's did not guarantee their part-time employees a specific number of hours. The human-resources manager also provided testimony on Coborn's scheduling practices, Palmer's reduced hours, and his accrued earnings based on billing data.

The unemployment law judge (ULJ) affirmed the department's finding of ineligibility. The ULJ found that Palmer quit his employment because of his reduced hours, his belief that he was being treated unfairly, and because his injury prevented him from working as a stocker. The ULJ found that he did not quit for a good reason caused by his employer. Palmer requested reconsideration, and the ULJ affirmed the ineligibility decision. Palmer appeals by writ of certiorari.

**D E C I S I O N**

An employee who quits employment is ineligible for unemployment-compensation benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). "[A] good reason [to quit] caused by the employer" is a statutory exception to ineligibility. *Id.*, subd. 1(1). A medical necessity may also be an exception

to ineligibility if the employee notifies the employer of the problem, requests accommodation, and receives no reasonable accommodation. Minn. Stat. § 268.095, subd. 1(7). The determination that an employee quit without good reason caused by the employer is a legal conclusion that we review de novo. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law); *see also Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (exercising independent judgment on issue of law). A ULJ's factual determinations must be supported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d)(5) (2008). We defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

On appeal, Palmer argues that his reasons for terminating his employment were for a good cause attributable to his employer because Coburn's treated him unfairly by reducing his hours and by informally admonishing him in the workplace. He also argues that his medical circumstances provide an exception to ineligibility.

We first address Palmer's claim that he had good cause to quit because of his reduced hours and earnings. A substantial reduction in salary may provide an employee with good cause to quit. *Scott v. Photo Ctr., Inc.*, 306 Minn. 535, 536, 235 N.W.2d 616, 617 (1975) (holding that twenty-five-percent reduction in wages established good cause for quitting); *McBride v. LeVasseur*, 341 N.W.2d 299, 300 (Minn. App. 1983) (holding that thirty-percent reduction in pay as result of change to hourly pay rate from monthly salary established good cause for quitting). A pay decrease of two-to-four percent or even ten percent, however, has been determined not to be a substantial change that would

be a good reason to quit that is attributable to the employer. *Hessler v. Am. Television & Radio Co.*, 258 Minn. 541, 549, 104 N.W.2d 876, 882 (1960); *Dachel v. Ortho Met, Inc.*, 528 N.W.2d 268, 270 (Minn. App. 1995).

The testimony by Coborn's human-resources manager and the payroll records that were submitted at the hearing establish that from 2007 to 2008 Palmer averaged one-and-a-half fewer hours per week. Specifically, in 2007 Palmer worked an average of twenty-seven-and-a-half hours each week and in 2008, an average of twenty-six. Palmer's salary in 2007 was $18,015 and in 2008 it was $17,048, which is between a 5.3 and 5.4 percent reduction in earnings. By his own account, from 2007 to 2008 Palmer sustained a 5.4 percent wage reduction. A 5.3 or 5.4 percent reduction in earnings is not so substantial that it constitutes a good reason caused by Coborn's for quitting his employment.

Palmer also claims that he was treated unfairly because shifts that he had regularly worked were given to three employees who had connections with the manager. This claim is not substantiated by the record. The human-resources manager testified that an employee's weekly hours are not guaranteed and that the hours fluctuate during the year because of the nature of their business. And, that at times the company has to "retarget," meaning that it reduces the number of hours in a department based on the relationship between projected labor and actual sales. She also testified that Palmer's department had been "retargeted." On this record, Palmer's dissatisfaction with Coborn's changes in scheduling does not constitute a good reason for quitting his employment.

Palmer also alleges that he had good reason to quit because he was subject to unfair workplace admonitions. Palmer testified that he was told he had a "negative

attitude;" that if he was unhappy with the reduced hours, "you know what you can do about it." Because of specific incidents, Palmer was also told not to speak with vendors. No disciplinary action accompanied any of the informal admonitions.

"Good cause attributable to the employer" does not encompass a situation in which an "employee is simply frustrated or dissatisfied with his working conditions." *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986). Nor does it extend to a "personality conflict" or general unhappiness with the working relationship. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (citing *Foy v. J.E.K. Indus.*, 352 N.W.2d 123 (Minn. App. 1984)). Although the ULJ observed that the informal admonitions were "unprofessional" and "rude at times," Coborn's behavior does not rise to the level of conduct that is good cause to quit. The record does not show that Coborn's acted arbitrarily or unreasonably in its interactions with Palmer. *See Bongiovanni*, 370 N.W.2d at 699 (concluding lack of good cause for quitting because no showing that employer was arbitrary or unreasonable).

Palmer's final challenge is to the ULJ's finding that Palmer did not quit because of medical necessity. An exception to ineligibility exists if an employee quits as a result of an injury that makes termination of employment medically necessary. Minn. Stat. § 268.095, subd. 1(7). The statute specifically provides, however, that the exception only applies if the employee informs the employer of the injury "and requests accommodation and no reasonable accommodation is made available." *Id.*

Palmer provided no evidence to his employer that it was medically necessary for him to quit. After Palmer fell in early February 2009 he did not notify Coborn's about

his injury. He stopped reporting to work but provided no explanation until July 29, 2009, more than five months after he was injured. When Palmer contacted Coborn's, he sent a letter informing Coborn's he was quitting specifically because of "disability" unrelated to work and "retirement." And Palmer did not ask for an accommodation for his injury.

Palmer did not demonstrate that he quit his employment for a good reason caused by the employer or because it was medically necessary. The ULJ properly concluded that Palmer is ineligible to receive unemployment compensation benefits.

**Affirmed.**