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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1494**

James Keating,  
Relator,

vs.

Assurant Insurance Company,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 3, 2011  
Affirmed  
Huspeni, Judge\***

Department of Employment and Economic Development  
File No. 25409022-3

James Keating, Woodbury, Minnesota (pro se relator)

David J. Goldstein, Joseph D. Weiner, Littler Mendelson PC, Minneapolis, Minnesota  
(for respondent Assurant Insurance Company)

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

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

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

## **UNPUBLISHED OPINION**

**HUSPENI**, Judge

Relator James Keating appeals, by writ of certiorari, an unemployment law judge's determination that he is ineligible to receive unemployment-compensation benefits. Because Keating did not quit for a good reason attributable to his employer, we affirm.

### **FACTS**

Assurant Insurance Company employed James Keating as a sales representative from May 2008 to June 1, 2010. Selling health insurance policies, Keating earned a base salary of \$26,000 plus commissions. Effective January 1, 2010, Assurant changed the bonus and commission structure. Additionally, in 2010 Assurant altered its advertising strategy, which shifted the sources of work flow for sales representatives. Keating quit his employment on June 1, 2010.

Keating applied to the Minnesota Department of Employment and Economic Development for unemployment compensation, but was denied benefits because he had quit his employment and for this reason none of the statutory exceptions to ineligibility were applicable. He appealed from this decision and an evidentiary hearing was held.

At the hearing Keating argued that he had a good reason for quitting because changes in the pay structure diminished his annual income and shifts in advertising strategy had led to a decreased work flow, which also decreased his annual earnings.

Assurant offered testimony by a sales supervisor, who testified that under the new pay structure, earning opportunities continued to exist, such as commissions on specific

products, quarterly bonuses, and year-end-retention bonuses. He also testified that in May 2010 it would not have been possible to predict a person's total annual compensation for 2010. The sales supervisor further testified that Assurant changed its advertising strategy by decreasing its spending on television advertising, putting money into internet sources, and implementing a new technology called a "dialer." He said that in May 2010 there was no less business than in May 2009 and that in May 2010 it would have been premature to judge the amount of business the dialer would generate.

The unemployment law judge (ULJ) concluded that Keating did not quit employment for a good reason caused by the employer because his reasons for quitting, decreased annual income and diminished work flow that would lead to less income, were speculative. Keating requested reconsideration and the ULJ affirmed the decision. Keating now petitions for review, alleging that he quit employment for a good reason attributable to the employer.

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

We review a ULJ's ineligibility decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010).

An employee who quits employment is ineligible to receive unemployment compensation benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). "[A] good reason [to quit] caused by the employer" is an exception to ineligibility. *Id.*, subd. 1(1). "A good reason caused by the employer" is a reason that

“directly related to the employment and for which the employer is responsible,” “is adverse to the worker,” and “would compel an average, reasonable worker to quit.” *Id.*, subd. 3(a)(1)-(3) (2010). A ULJ’s findings of fact are viewed in the light most favorable to the decision. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The determination that an employee quit without good reason caused by the employer is a legal conclusion that we review de novo. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

On appeal, Keating renews his claim that he quit for a good reason attributable to the employer because the changes in the pay structure and in how the company developed work flow resulted in a substantial decrease in his income. The ULJ determined that Keating did not know whether his annual income would change, and that the possibility that he might earn less was not a good reason for quitting caused by his employer. The record and the relevant law support this determination.

A substantial adverse change in wages can be considered a good reason for quitting caused by the employer. *Rootes v. Wal-Mart Assocs. Inc.*, 669 N.W.2d 416, 418-19 (Minn. App. 2003). Speculation that income may decrease, however, does not constitute a good reason for quitting. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 802 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). Keating testified that he quit because he believed the new pay structure had the potential to decrease his earnings. He further testified that commissions on specific products had been decreased or eliminated and that bonuses were significantly lessened by the new structure’s “chargeback” system, in which a sales representative could lose a portion of commission

that that they earned on the sale of a policy up front if a customer dropped the policy within a certain timeframe. Keating, however, also testified that he could not predict what his 2010 income would be with these changes in place and acknowledged that his monthly bonuses fluctuated. Additionally, the record indicates that some of his 2010 monthly bonuses were higher than in the same month of the previous year, before the new pay structure was implemented.

The sales supervisor testified that changes to the bonus and commission structure did not eliminate or decrease earning opportunities in the ways Keating alleged. The ULJ found that the sales supervisor's testimony was credible because he was in a position to know how the bonus and commission structure worked; his testimony was detailed and consistent. On review we defer to the ULJ's assessment of credibility and resolution of conflicting testimony. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Based on the sales supervisor's testimony, the ULJ made specific findings. The ULJ found that the new pay structure "paid the commission as if the customer had paid for nine months, and if the customer canceled the plan before nine months, the commission paid for the time after the customer canceled the policy would be taken back from the employee." If a customer retained the policy for a full year, "employees would receive commission for the final three months, and be given a retention bonus." The ULJ found that in his projections of 2010 pay, Keating failed to include this final three months of commission or the retention bonus. On review, we defer to these findings. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989) (stating that reviewing court

defers to findings of fact as long as reasonably sustained by evidence). Keating's belief that his income would decrease as a result of the new pay structure is speculative and does not constitute a good reason for quitting.

Keating also testified that changes in Assurant's advertising strategy decreased his work flow, which resulted in decreased income. The ULJ found that the prediction of a decrease in work flow was speculative, that Keating had "limited information," and that he had "assumed" that the number of leads would decrease. We defer to the ULJ's findings of fact as long as there is evidence that reasonably sustains them. *Id.* Those findings reflect the credibility the ULJ awarded to the testimony of the sales supervisor, and the record supports the findings. Because the impact of the new advertising strategy on workflow was unknown at the time Keating quit, any alleged loss of income due to the changes was speculative. The possibility of the shifts in advertising decreasing his earnings is not a good reason for quitting caused by Assurant.

Keating has not demonstrated that he quit his employment for a good reason caused by the employer. The ULJ properly concluded that Keating is ineligible to receive unemployment-compensation benefits.

**Affirmed.**