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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1920**

Jehad Dupuy,  
Relator,

vs.

ARG Resources, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 23, 2012  
Affirmed  
Stoneburner, Judge**

Minnesota Department of Employment and Economic Development  
File No. 27926915-3

Jehad Dupuy, Mankato, Minnesota (pro se relator)

ARG Resources, LLC, Indianapolis, Indiana (respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and  
Hudson, Judge.

## UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits because he quit his employment without good cause attributable to his employer. We affirm.

### FACTS

Relator Jehad Dupuy began working for respondent ARG Resources, LLC, d.b.a. Arby's (Arby's) on November 3, 2010. Dupuy worked as a manager at the St. Peter location. Karen Robb, the general manager at the St. Peter Arby's, was Dupuy's immediate supervisor. On May 17, 2011, while Dupuy was completing an inventory, he noticed that a distributor had delivered an extra case of chicken to the St. Peter Arby's. The next day, Robb told Dupuy that she was not going to report the delivery error and that Dupuy needed to have the "right answer" in case Ken Myers, their area manager, or Mark Kocer, director of operations for Arby's in Minnesota, were to call and inquire. Dupuy did not report his concerns about Robb's handling of the delivery error to Myers or Kocer, but he was upset that Robb apparently stole a case of chicken from the distributor and failed to report it.

On May 27, 2011, Dupuy and Robb met with Myers to discuss Dupuy's "promotion review," goal-setting options, and possible learning opportunities. According to Dupuy, at some point during this meeting, while discussing procedures for accepting food deliveries, Robb made a gesture that Dupuy considered to be obscene to demonstrate how she was taught to check to see if meat was frozen. As she made the

gesture, she stated: “you stick your finger in the hole and finger the meat.” Dupuy did not tell Robb or Myers that he considered the gesture obscene or that he was offended. Myers later testified that he did not consider the gesture obscene.

A “respect poster” is posted in the St. Peter Arby’s with telephone numbers of people in authority who can be contacted regarding any workplace issue. Also posted is an “ethics hotline” number where employees can make anonymous complaints or inquiries about workplace issues. Dupuy did not call any of these numbers to report or discuss his concerns about Robb’s conduct.

Dupuy did not return to work after May 27. Dupuy was next scheduled to work Sunday, May 29, but called in sick on both Sunday and Monday, May 30. Dupuy was then scheduled to work on Tuesday, May 31, but he never called in and did not show up for work. On May 31, 2011, Dupuy sent a letter to Arby's Human Resources at its corporate office in Atlanta, Georgia. In the letter, Dupuy described several incidents that had taken place at the St. Peter Arby’s, including the delivery-error and the hand-gesture. Dupuy stated that “[a]t this point, I am too uncomfortable working with [Robb] and cannot bring myself to return to that store.”

Dupuy applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility, concluding that Dupuy had been discharged for employment misconduct when he failed to call in or show up for work. Dupuy appealed the determination, and an evidentiary hearing was held before a ULJ. The ULJ found that Dupuy quit on May 31, 2011, and concluded that the quit was without good reason attributable to the employer, making

Dupuy ineligible to receive unemployment benefits. Dupuy requested reconsideration. The ULJ affirmed the decision, and this certiorari appeal followed.

## D E C I S I O N

When reviewing a ULJ's decision, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are made upon unlawful procedure, affected by other error of law, unsupported by substantial evidence in view of the entire record as submitted, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2010).

We view factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee is ineligible to receive unemployment benefits, including whether an employee quit without good reason caused by the employer, presents a question of law, which we review de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Generally, a person who quits employment is ineligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). Under one exception, an employee may still receive benefits if he or she "quit the employment because of a good reason caused by the employer." *Id.*, subd. 1(1). A good reason caused by the employer for quitting is defined as a reason that is directly related to the employment, for which the employer is responsible; that is adverse to the worker; and

that would compel an average, reasonable worker to quit and become unemployed. Minn. Stat. § 268.095, subd. 3(a) (1)-(3) (2010). “The standard of what constitutes good cause [to quit employment] is the standard of reasonableness as applied to the average man or woman . . . .” *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 13 (Minn. App. 1986) (quotation omitted). Adverse working conditions exist when workplace conditions combine to create “unreasonable demands of [the] employee that no one person could be expected to meet.” *Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn.1978); *see Portz*, 397 N.W.2d at 14 (good cause “does not encompass situations where an employee experiences irreconcilable differences with others at work or where the employee is simply frustrated or dissatisfied with his working conditions”). But this exception applies only if the employee complains to the employer about the adverse condition and affords the employer a reasonable opportunity to cure the condition. Minn. Stat. § 268.095, subd. 3(c) (2010).

Dupuy first argues that he quit for a good reason caused by his employer because Robb’s refusal to report the delivery of extra chicken created adverse working conditions. “Illegal conduct by an employer may constitute good cause for an employee to quit.” *Hawthorne v. Universal Studios, Inc.*, 432 N.W.2d 759, 762 (Minn. App. 1988). But the cases in which we have found that illegal conduct was sufficient to give good reason for an employee to quit primarily involve an employer’s attempt to persuade the employee to commit or participate in an illegal act or create unsafe conditions. *See Burtman v. Dealers Disc. Supply*, 347 N.W.2d 292, 294 (Minn. App. 1984) (noting that an employer’s insistence on sales tactics repugnant to an employee would be good cause

attributable to the employer if the employee had given sufficient notice of his objections to the employer); *see also Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn. App. 1992) (holding that when adverse working condition was caused by employer's violation of federal trucking laws, employee "has good cause per se to quit at any time as a result of the violation" because trucking laws affect public safety). And to be eligible for unemployment benefits, notice of an objection, even to illegal activity, is required in order to give the employer an opportunity to correct the situation. *Burtman*, 347 N.W.2d at 293.

Although Dupuy's testimony implies that Robb was asking him to be prepared to lie if he was questioned about the delivery error, the record does not demonstrate that Dupuy was ever questioned about the incident, and he was never instructed to lie about the delivery. Dupuy asserts that he asked Robb on four separate occasions to report her theft, but Dupuy did not report Robb's suspected illegal behavior to the appropriate reporting authorities, despite the posted notice of whom to call to make such a report and the availability of anonymous reporting.

Dupuy next argues that Robb's obscene gesture gave him good cause to quit. An individual "has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action." Minn. Stat. § 268.095, subd. 3(f) (2010). "Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature" that has the purpose or effect of substantially interfering with an

individual's work performance or creating an intimidating, hostile, or offensive working environment. *Id.*

To establish that an employer was aware of sexual harassment, the employee must ordinarily notify the employer of the sexual harassment. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 387 (Minn. App. 2005). "Notice to the employee's supervisor or upper-level management provides the employer with the knowledge required to discipline harassing employees or otherwise remedy inappropriate conduct." *Id.*

Dupuy failed to report to anyone the fact that he found Robb's gesture relating to checking for frozen meat obscene. Dupuy argues that he was relieved of the reporting responsibility because his supervisor, Robb, made the obscene gesture and it was witnessed by Myers, who had authority over Robb. But Myers testified that he found the gesture amusing and not sexual or obscene, and this testimony, which the ULJ found credible, supports the ULJ's finding that the gesture was ambiguous. Determining the credibility of witnesses is the "exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. Given the ambiguous nature of the gesture, Dupuy was not relieved of the responsibility to make his supervisors aware that he was offended by the conduct.

Because Dupuy did not give his employer the opportunity to correct the problem with dishonesty or the sexual harassment that he perceived, the ULJ did not err by concluding that Dupuy does not meet the requirements of the exception to ineligibility that results from voluntarily quitting employment.

**Affirmed.**