STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0322

John R. Swenson,
Relator,

vs.

Bigos Management, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 5, 2012
Affirmed
Schellhas, Judge

Department of Employment and Economic Development
File No. 28670213-3

Carl A. Blondin, P.A., Carl A. Blondin, A.R.N., Oakdale, Minnesota (for relator)

Bigos Management, Inc., Golden Valley, Minnesota (respondent)

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

Considered and decided by Chutich, Presiding Judge; Schellhas, Judge; and Cleary, Judge.

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

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that the ULJ abused his discretion. We affirm.

FACTS

Relator John Swenson was employed as a full-time maintenance technician at Bigos Management from November 15, 2010, until November 17, 2010. When he applied for the position, Swenson told Bigos that he could make some repairs on refrigerators but was unable to work with Freon.

On November 17, Swenson worked with another Bigos employee, Randy Ebbinger. Swenson testified that during their shift, Ebbinger asked him to repair a refrigerator because he believed there to be something wrong with the Freon. Swenson testified that he told Ebbinger that he was unable to repair the refrigerator because he did not know "anything about Freon and stuff like that." Ebbinger then allegedly told Swenson that he thought Bigos had hired "somebody . . . that knew about repairing refrigerators." Swenson testified that, at the end of their shift, Swenson and Ebbinger went to the manager's office and had a conversation in which Swenson told the manager that he "knew how to do a little bit of repairs on refrigerators but . . . nothing about refrigeration." The manager then allegedly told him, "I'm sorry, we need somebody that knows how to do refrigeration." Swenson testified that he believed that the manager's comment meant he was being fired, so he dropped off his keys and timesheet and left.

The next day, Swenson called the "big boss" at the main office and "kind of exchanged apologies and that was it." Swenson claims that Bigos terminated his employment.

Bigos disputes Swenson's version of events. Ebbinger testified that, although he told Swenson "something about working on a refrigerator," he never mentioned "anything with refrigeration that had a leak in it or anything like that." He also testified that he left work a half hour earlier than Swenson and therefore was not present during the purported conversation in the manager's office. Ebbinger testified that when he came to work the following day, the manager told him that Swenson had quit the night before because "there was just too much information that he had to remember." Ebbinger and Craig Peters, a human resources representative with Bigos, both testified that Bigos works with its employees to get them their necessary training and licensing. Peters further testified that, when Bigos hired Swenson, they knew that he "had limited experience in refrigeration"; that the manager did not have the authority to discharge Swenson; and that if Swenson had been discharged, Bigos would have sent him a letter of discharge.

Swenson appealed a determination by the Department of Employment and Economic Development (DEED) that he was ineligible for unemployment benefits. A ULJ conducted a hearing and found the testimony of Bigos employees Ebbinger and Peters more credible than Swenson's testimony because it "followed a logical chain of events and was more reasonable under the circumstances." The ULJ also found that neither Ebbinger nor the manager was authorized to discharge Swenson without Peters's approval, that Bigos would have trained Swenson if he had not quit, that the preponderance of the evidence established that Bigos had no intention to discharge

Swenson, and that Swenson quit because he was "overwhelmed by the new position." The ULJ concluded that Bigos's actions would not lead a "reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." Swenson filed a request for reconsideration on December 9, 2011, and the ULJ affirmed his decision on January 27, 2012.

This appeal follows.

D E C I S I O N

Swenson argues that the ULJ erroneously determined that he was ineligible for unemployment benefits and challenges the ULJ's finding that he quit his employment. In reviewing a decision of a ULJ, this court may reverse or modify a decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, or decision are, among other things, unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2010). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). Appellate courts review "the ULJ's factual findings in the light most favorable to the decision," *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted), and this court, in doing so, "giv[es] deference to the credibility determinations made by the ULJ" and "will not disturb the ULJ's factual findings when the evidence substantially sustains them," *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012).

Generally, an employee who voluntarily quits his employment is ineligible for unemployment benefits unless he falls under one of the statutory exceptions in Minn. Stat. § 268.095, subd. 1 (2010). "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) (2010). But if an applicant is discharged by his former employer, he is eligible for benefits so long as the discharge was not based on the applicant's employment misconduct. *Id.*, subds. 4, 6 (2010). A discharge from employment occurs when "any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." *Id.*, subd. 5(a) (2010). "Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted).

The ULJ based his finding that Swenson quit on Ebbinger's and Peters's testimony, which he found more credible than Swenson's because it "followed a logical chain of events and was more reasonable under the circumstances." "When witness credibility and conflicting evidence are at issue, we defer to the decision-maker's ability to weigh the evidence and make those determinations." *Id*. And we "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Rowan*, 812 N.W.2d at 882. Here, the record substantially supports the ULJ's findings that Swenson's manager did not have the authority to discharge Swenson. Both Peters and Ebbinger testified that Bigos's policy was to train employees in areas in which Bigos wanted them to have expertise. Both Peters and Swenson acknowledged that, when Swenson was

hired, Swenson told Bigos that he did not have any expertise in performing refrigeration repairs. And the record does not indicate that Swenson complained about his job requirements, requested training, or sought clarification about his position from anyone at Bigos.

Swenson argues that the ULJ erred in his eligibility decision because the manager did not testify and it was he who purportedly discharged Swenson, making Swenson's account of the alleged discharge the only credible evidence and requiring a finding that he did not quit his employment. Swenson's argument is unpersuasive. This court has repeatedly stated that a ULJ may consider a broad array of factors when making credibility determinations. *See Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007) (stating that "[w]hen assessing witness credibility, the ULJ may consider all relevant factors, including, but not limited to, the witness's interest in the case's outcome, the source of the witness's information, the witness's demeanor and experience, and the reasonableness of the witness's testimony"), *see also Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532–33 (Minn. App. 2007) (discussing the factors the ULJ may consider when making a credibility determination) (citing to 4 *Minnesota Practice*, CIVJIG 12.15 (2006)). We conclude that the ULJ properly considered the evidence and made credibility determinations to which we defer upon review.

Swenson argues that under the theories of agency by estoppel and apparent authority, he reasonably believed that the manager could discharge him. But whether the manager had the authority—actual, apparent, or otherwise—to discharge Swenson is not

at issue. The ULJ's decision turned on the witnesses' credibility about the circumstances surrounding Swenson's employment termination, not on Swenson's belief at the time of his purported discharge.

We note that DEED points out in its brief what it believes to be an inconsistency in Swenson's testimony. Swenson testified as follows: "I mean if they weren't releasing me why did they call me back the next day and say you can still work here, to do this and this but I knew nothing about refrigeration." In reading the transcript in its entirety, we suspect that the transcript was in error, and that Swenson actually said "I mean if they weren't releasing me why *didn't* they call me back the next day and say you can still work here . . . ." But even assuming that the transcript contains an error, we conclude that the ULJ's decision was supported by substantial evidence.

We conclude that evidence substantially supports the ULJ's finding that Swenson's testimony was not credible, and we therefore conclude that Swenson quit his employment with Bigos; Bigos did not discharge him.

Affirmed.