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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0492**

Yonis Farah,
Relator,

vs.

Midwest Quality Home Care, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 26, 2012
Affirmed
Chutich, Judge**

Department of Employment and Economic Development
File No. 28856852-4

Yonis Farah, Bloomington, Minnesota (pro se relator)

Midwest Quality Home Care, Inc., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Yonis Farah challenges the determination of the unemployment-law judge that he is ineligible for unemployment benefits because he voluntarily quit his employment without good reason caused by the employer. Because substantial evidence supports the unemployment-law judge's factual findings, and because his legal conclusions are not erroneous, we affirm.

FACTS

Farah began working at Midwest Quality Home Care, Inc. (Midwest Quality) as a personal care assistant on October 16, 2010. He worked every day from 5:00 p.m. to 10:45 p.m., and usually worked approximately 40 hours per week, earning \$11 per hour. He also had another full-time job at Best Academy, where he worked Monday through Friday, 8:00 a.m. to 4:30 p.m., and earned \$15 per hour.

In early October 2011, Farah's supervisor told Farah that his shift at Midwest Quality was changing at the client's request, and that he would have to work at 6:00 a.m., rather than the evening shift that he had previously been working. Farah told his supervisor that he could not work a morning shift because it conflicted with his job at Best Academy, and the supervisor replied that the early morning hours were all Midwest Quality could offer him at that time. Farah signed a Voluntary Employment Termination form effective October 14, 2011, stating that the reason he was quitting was "time conflict for my other job."

Farah applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development, which denied his application because it found that he voluntarily quit his employment. Farah appealed this determination, and the unemployment-law judge held a telephone hearing at which Farah testified on his own behalf. Mona Gajjar, a coordinator at Midwest Quality, testified on behalf of the employer.

Farah contended that he did not voluntarily quit his job at Midwest Quality, but rather that he was discharged due to the schedule change that conflicted with his other job. He claimed that it was Midwest Quality's idea to end the employment since he could not work the early morning shift. Farah conceded that he could have continued working at Midwest Quality if he had not opted to work at Best Academy.

Gajjar testified that Midwest Quality did not force Farah to quit, and that Farah was free to continue working for Midwest Quality, but that, because of the client's needs, the company could not offer him the same evening shift. Ultimately, Gajjar testified that Farah quit of his own accord, because of the conflict with his schedule at Best Academy.

During the telephone hearing, the unemployment-law judge asked to speak with Farah's direct supervisor, Said Farah,¹ and Gajjar left the phone to speak with Said. Although Said was unable to come to the telephone, Gajjar relayed his statement that he did ask Farah to work the morning shift because of the client's needs, but he never forced Farah to do anything.

¹ The record contains no evidence that Said Farah is any relation to relator Yonis Farah.

The unemployment-law judge concluded that Farah quit voluntarily, and not for a good reason caused by the employer. Thus, the judge upheld the department's denial of unemployment benefits, and later denied Farah's request for reconsideration. Farah now appeals this determination.

D E C I S I O N

Generally, an applicant who quit his or her employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). One exception to this rule is when “the applicant quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). “[G]ood reason caused by the employer” is defined as “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) (2010).

In reviewing the unemployment-law judge's determination that an employee is ineligible for benefits, we review findings of fact in the light most favorable to the decision, we defer to the judge's credibility determinations, and we will not disturb the judge's factual findings when the evidence substantially sustains them. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). “Whether an employee voluntarily quit is a question of fact for the [unemployment-law judge].” *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). We review *de novo* whether an employee quit for good reason caused by the employer. *Munro Holding, LLC v. Cook*, 695 N.W.2d

379, 384 (Minn. App. 2005). This court may “affirm the decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights have been prejudiced because the findings, inferences, conclusion, or decision is affected by an error of law or is unsupported by substantial evidence in view of the record as a whole.” *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010); *see also* Minn. Stat. § 268.105, subd. 7(d) (2010).

The unemployment-law judge found that Farah was not discharged by Midwest Quality, but rather that he voluntarily quit his employment. We conclude that this factual finding is substantially supported by the evidence. The employer testified that Farah was not fired, but that he was free to continue working at Midwest Quality under the new, early-morning schedule. Although Farah claims that he was discharged from his employment at Midwest Quality, he admitted that he could have continued working there if he agreed to the new schedule.

In addition, Farah signed a Voluntary Employment Termination form, lending further support for the judge’s finding that “[t]he decision to end the employment was Farah’s.” *Compare* Minn. Stat. § 268.095, subd. 2(a) (2010) (“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.”) *with* Minn. Stat. § 268.095, subd. 5(a) (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.”).

Farah contends that the unemployment-law judge erred in not speaking with his direct supervisor, Said Farah, and that Said would have testified that Farah was discharged. Gajjar spoke with Said during the telephone hearing, however, and reported to the judge Said's statement that Farah was free to stay at Midwest Quality if he agreed to work the new shift. Farah's argument is without merit because an unemployment-law judge "may receive any evidence that possesses probative value, *including hearsay*, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2011) (emphasis added); *see also Marn v. Fairview Pharmacy Servs. LLC*, 756 N.W.2d 117, 122–23 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). Even though Gajjar was not present when Said and Farah spoke about his schedule change, she reported Said's version of events and the judge properly considered the hearsay evidence. We therefore affirm the unemployment-law judge's factual findings.

Further, Farah did not have a good reason to quit his employment under the requirements of Minn. Stat. § 268.095, subd. 3(a). Although the schedule change was directly related to Farah's employment, the change was not adverse to him because Midwest Quality offered him the same employment, just at a different time. The unemployment-law judge concluded that Farah did not quit for a good reason caused by the employer because Midwest Quality never guaranteed any specific schedule to Farah and that "this change in schedule would not cause an average, reasonable person to quit and become unemployed," as required by the statute. We agree.

An employee's dissatisfaction with his or her schedule is not good reason to quit caused by the employer. See *Shanahan v. Dist. Mem. Hosp.*, 495 N.W.2d 894, 897 (Minn. App. 1993) (concluding that employee did not have a good reason to quit caused by the employer where her position was terminated and she was given the opportunity to interview for an equivalent position, but chose not to do so); *Kampa v. Normandale Tennis Club*, 393 N.W.2d 195, 197 (Minn. App. 1986) (“[An employee’s] own scheduling problems did not constitute good cause to terminate her employment.”), review denied (Minn. Nov. 17, 1986); *Markert v. Nat’l Car Rental*, 349 N.W.2d 859, 861 (Minn. App. 1984) (concluding that an employee who resigned because of a change in schedule did not quit for good cause attributable to the employer where the schedule change was “merely inconvenient” to the employee). Thus, the unemployment-law judge correctly found that Farah did not have a good reason to quit.

In sum, substantial evidence supports the unemployment-law judge’s factual finding that Farah voluntarily quit his employment at Midwest Quality. The judge’s legal conclusion that Farah did not quit for a good reason caused by the employer is not erroneous.

Affirmed.