STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1318

Douglas Liverence,
Relator,

vs.

Apple American Group LLC – Applebee's,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 18, 2013
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 29546005-3

Douglas Liverence, Lakeville, Minnesota (pro se relator)

Apple American Group LLC-Applebee's, Arden Hills, 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 Hudson, Presiding Judge; Kalitowski, Judge; and Kirk, Judge.

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

KALITOWSKI, Judge

Relator Douglas Liverence challenges the unemployment-law judge's (ULJ) decision that he is ineligible for unemployment-compensation benefits, arguing that respondent Apple American Group LLC-Applebee's (Applebee's) tricked him into signing a resignation notice, and that he had good reason to quit caused by the employer. We affirm.

D E C I S I O N

Whether an employee quit with good reason caused by the employer is a question of law, which we review de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). The ULJ must base his or her conclusions on factual findings that have substantial evidentiary support. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Rowan*, 812 N.W.2d at 882 (quotation omitted).

Generally, an employee who quits his or her employment is ineligible for unemployment-compensation benefits. Minn. Stat. § 268.095, subd. 1 (2012). "A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (2012). But an employee who quits because of a "good reason caused by the employer" may be eligible to receive unemployment-compensation benefits. *Id.*, subd. 1(1).

> A good reason caused by the employer for quitting is 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) (2012). This standard must be applied to the specific facts of each case. *Id.*, subd. 3(b) (2012). But generally, "a substantial wage or hours reduction is good reason to quit." *Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715, 723 (Minn. App. 2012) (holding that a reduction from 40 hours per week to 24 hours per week was substantial); *see also Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 85 (Minn. 1981) (holding that a 21-26% wage reduction was substantial).

Liverence Voluntarily Quit

Liverence argues that an Applebee's supervisor tricked him into signing a resignation notice. But the ULJ found that Liverence voluntarily quit. This finding is supported by the Applebee's supervisor's testimony, which the ULJ found was more credible than Liverence's testimony: "the unemployment[-]law judge found [the supervisor's] testimony more credible than Liverence's testimony. [The supervisor] provided a more plausible scenario regarding the events of the final day. [The supervisor's] testimony was more logical and followed a more realistic chain of events." We must defer to the ULJ's credibility determinations. *Rowan*, 812 N.W.2d at 882.

Additionally, the supervisor's testimony provides substantial support for the ULJ's determination that Liverence voluntarily quit. The supervisor testified that he offered

Liverence an hourly-wage-scale proposal, which Liverence declined. Liverence then demanded $35 per hour. The supervisor declined Liverence's counteroffer and stated, "[T]his is your last opportunity of staying on this team. If you choose not to sign this [proposal] right now then I am gonna be looking for your replacement." When Liverence reiterated his demand for $35 per hour, the supervisor testified that he handed Liverence a resignation form; Liverence signed the form and wrote "pay issues" as his reason for "not wanting to move forward." Other than Liverence's self-serving testimony, which the ULJ found was not credible, nothing in the record supports Liverence's contention that the supervisor tricked him into signing the resignation notice. Thus, substantial evidence supports the ULJ's conclusion that Liverence voluntarily quit.

Quitting for Good Reason Caused by the Employer

The ULJ concluded that Liverence did not have good reason to quit, reasoning that the evidence does not support that Liverence's wages would have decreased for the remainder of the calendar year under the hourly-wage-scale proposal. Moreover, the ULJ concluded that even if Liverence's wages would have decreased as he claimed, this would not cause an average, reasonable worker to quit. Substantial evidence supports both of the ULJ's conclusions.

The evidence shows that the hourly-wage-scale proposal did not reduce Liverence's wages. When Liverence began working at Applebee's, he made approximately $68,000 per year, or about $1,307 per week, and worked about 45 hours per week. In March 2012, the supervisor offered Liverence an hourly wage of $27.64 per hour for the first 40 hours per week, and $41.46 per hour for overtime. The supervisor

also guaranteed Liverence five hours of overtime every week. Thus, the hourly-wage-scale proposal would have paid Liverence $1,312 per week for his average 45-hour work week, which would have been an increase over his $1,307 weekly wage. Because Liverence's wages would have increased under the hourly-wage-scale proposal, he did not have good reason to quit.

In arguing that his wages would have been substantially reduced under the hourly-wage-scale proposal, Liverence states that for "[a]n average 40[-]hour work week," he was "offered $27.64 per hour[,] which equates to $57,400 per year[,] which was substantially lower [than] what I was given by . . . the person who hired me." But Liverence erroneously calculates his wages based on a 40-hour work week. Liverence testified that he worked 40-to-45 hours per week. And his math does not account for the guaranteed five hours per week of overtime pay at $41.46 per hour. In calculating wages, overtime pay must be considered. *Wood v. Menard, Inc.*, 490 N.W.2d 441, 444 (Minn. App. 1992) ("The Commissioner's representative erred by not including holiday, overtime, and profit sharing in calculating whether [appellant's] decrease in salary was substantial."). The five hours per week of overtime pay would have added another $207.30 per week to Liverence's calculation of his wages without increasing his average work hours.

Finally, Liverence argues that Applebee's violated the Federal Labor Standards Act and cheated him out of overtime pay. But Liverence provides no support for these arguments, nor did he present these arguments to the ULJ. Therefore, we will not consider them on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating

that an appellate court will not consider matters not argued to and considered by the district court); *see also State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that assignments of error based on mere assertions and not supported by argument or authority are waived unless prejudicial error is obvious).

Affirmed.