STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1506

Michael W. Fridgen,
Relator,

vs.

University of Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 5, 2014
Affirmed
Smith, Judge

Department of Employment and Economic Development
File No. 31320374-3

Michael W. Fridgen, Rochester, Minnesota (pro se relator)

University of Minnesota, c/o ADP-UCM/The Frick Co., St. Louis, Missouri (respondent)

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

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith, Judge.

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

SMITH, Judge

We affirm the decision of the unemployment law judge (ULJ) that appellant is ineligible for unemployment benefits because substantial evidence supports the ULJ's findings, and these findings establish that appellant did not have a good reason caused by his employer to quit his employment.

FACTS

From June 2008 until June 2013, appellant Michael Fridgen was employed by the University of Minnesota as an international program coordinator at its Rochester campus. In March 2013, the university's chancellor reorganized the office Fridgen worked in, resulting in his being assigned to a new supervisor. The new supervisor notified him that she was increasing his work hours, instructed him to obtain approval in advance for expenses, and assigned him to coordinate a summer research program. She also refused him permission to work from home, and she cancelled a work-related overseas trip that Fridgen had scheduled for himself.

On May 13, 2013, Fridgen asked his new supervisor for permission to take vacation time that afternoon so that he could watch the Minnesota legislature vote on legalizing same-sex marriage. He explained to her that he had been involved in Minnesota's marriage-equality movement for "a very long time" and that "it meant a lot to [him] to witness the vote." His supervisor denied his request, instructing him that his "personal choices . . . needed to stay off campus and that [he] needed to work that afternoon." Fridgen was expected to attend a meeting occurring at the same time as the

vote. He believed the scheduling conflict was intentional. Fridgen attended the meeting, but he left halfway through it because he felt mentally stressed and physically ill. He went to his office to watch the vote on television.

Fridgen complained to the chancellor by email, stating that he felt that his supervisor's actions were homophobic. He stated that he would be unable to verify "the safety of the students" who planned to study abroad unless he was allowed to travel to the site, and he opined that he was not qualified to coordinate the summer research program his supervisor had assigned to him. He requested that he be assigned to a different supervisor. Two days later, the campus human-resources director informed him that he would continue working with his current new supervisor. Fridgen also filed a complaint with the University of Minnesota's Office of Equal Opportunity and Affirmative Action (EOAA). The EOAA office conducted an investigation and determined that Fridgen's allegation was unsubstantiated.

On June 3, 2013, Fridgen resigned from his position, believing that the changes to his employment conditions, his new work requirements, and his supervisor's actions involving the day of the legislature's same-sex marriage vote made the conditions of his employment such that "a normal rational person would resign from the position." Fridgen applied for unemployment benefits, and an administrative clerk at the respondent Minnesota Department of Employment and Economic Development determined that he was ineligible because his objections to the revised terms of his employment "did not have a substantial negative effect on [him] that would cause the average reasonable worker to quit" his employment. Fridgen appealed this determination and, after a

contested hearing, a ULJ found that "the preponderance of the evidence does not show that Fridgen quit because of a good reason caused by the employer." She also found that new supervisor's expectations regarding Fridgen's work hours "reflected practices that are common among employers" and that none of the supervisor's actions created adverse working conditions that would compel a reasonable worker to quit. The ULJ also found that "[t]he evidence does not show that his supervisor treated Fridgen differently because of sexual orientation." She ruled that Fridgen was ineligible for unemployment benefits because he "quit his employment with [the] University of Minnesota because of reasons other than a good reason caused by the employer." Fridgen requested reconsideration, asserting that his supervisor had told him that his "personal lifestyle choice must remain at home" and that this comment "created a harsh work environment for [him]." He added that "[i]t is very frustrating that heterosexual people have the ability to define homophobia for" him. The ULJ affirmed the denial of unemployment benefits, finding that Fridgen's revised claims were "insufficient to show that Fridgen quit his employment because of a good reason caused by the employer." She added that, "[a]lthough Fridgen believed that his supervisor's conduct was motivated by homophobia, the preponderance of the evidence does not show that there were adverse working conditions . . . that would compel an average, reasonable worker to quit." She also noted that Fridgen's frustration over having heterosexual people define homophobia was not relevant for purposes of determining his eligibility for unemployment benefits.

D E C I S I O N

Fridgen argues that his supervisor's homophobia "create[d] a hostile relationship that would prompt any reasonable person to terminate their employment." When reviewing a ULJ's decision that an applicant is ineligible for unemployment benefits, we may "reverse or modify the decision" when, among other considerations, it violates constitutional protections, is "unsupported by substantial evidence in view of the entire record as submitted," or is "arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2012). We view "the ULJ's factual findings in the light most favorable to the decision" and "will not disturb [them] 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). We defer to the ULJ's credibility determinations. *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010). But we review the ULJ's legal determination of an applicant's ineligibility to obtain unemployment benefits de novo, *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010), narrowly construing statutory bases for denial of benefits, Minn. Stat. § 268.031, subd. 2 (2012).

An applicant who quits employment is ineligible for unemployment benefits unless at least one of ten possible exceptions applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception is when the applicant quits "because of a good reason caused by the employer." *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). We review whether an employee had a good reason to quit de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012).

On appeal, Fridgen appears to abandon his objections to changes in his working conditions and focus exclusively on his allegation that his supervisor was homophobic, resulting in a "hostile relationship that would prompt any reasonable person to terminate their employment." Specifically, he alleges that his supervisor characterized homosexuality as a "personal lifestyle choice," and he asserts that it is his "experience that people who believe homosexuality to be a choice will often display other more hidden forms of homophobia." Fridgen states that this caused him to "not feel confident or safe with the decisions made by [his supervisor]," especially when they involved his conditions of employment. He argues that the ULJ "did not adequately weigh this statement and its implications when considering the case," and he contends that "careful attention is required to understand [his] identity as a sexual minority and a protected member of the Minnesota Human Rights Act."

The ULJ found no evidence that Fridgen's supervisor was homophobic or that her alleged homophobia caused any adverse working conditions for Fridgen. The record substantially supports the ULJ's factual finding. Fridgen's claim is undermined by the evolution in his account of what his supervisor said. At the contested hearing, Fridgen testified that his supervisor responded to his request to take vacation time to watch the legislature's same-sex marriage vote by telling him that his "personal choices . . . needed

to stay off campus and that [he] needed to work that afternoon." Fridgen testified that he had supported his request by citing his long involvement in Minnesota's marriage-equality movement, but he did not testify that he had referenced his sexual orientation. In context, therefore, the supervisor's reference to his "personal choices" appears to relate to Fridgen's activities as part of a political movement, not Fridgen's sexual orientation. In his request for reconsideration, Fridgen quoted his supervisor differently, claiming she said that his "personal lifestyle choice must remain at home." But, even if accurate, this altered recollection does not undermine the ULJ's determination, supported by the university's EOAA office, that Fridgen's supervisor did not display homophobia.

Fridgen speculates that his supervisor's alleged homophobia, displayed in this single comment, might have resulted in "more hidden forms" of homophobia and opines that he would lack confidence in her decisions as a result. The record contains no support for Fridgen's claim that his supervisor's alleged homophobia justified his quitting his employment. Fridgen neither identifies adverse employment actions that resulted from his leaving the meeting to watch the legislature's same-sex marriage vote, nor cites any other evidence linking his supervisor's alleged homophobia to any adverse employment action. "The correct standard for determining whether relator's concerns were reasonable is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 597 (Minn. App. 2006) (quotation omitted). Predictions of future difficulties also do not constitute adverse workplace conditions that would require a reasonable worker to quit his or her employment. *Cf.* Minn. Stat. § 268.095, subd. 2(b) (2012) ("An employee who has been

notified that the employee will be discharged in the future who chooses to end the employment while employment in any capacity is still available, is considered to have quit the employment."). Accordingly, we conclude that substantial evidence supports the ULJ's factual findings, and these findings establish that Fridgen did not have a good reason caused by his employer to quit, and we affirm the ULJ's denial of unemployment benefits.

Affirmed.