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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1405**

Bruce K. Rankila,
Relator,

vs.

Fairview Health Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 10, 2019
Affirmed
Bratvold, Judge**

Department of Employment and Economic Development
File No. 36438431

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Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits. Relator argues that he was discharged for reasons other than employment misconduct. Because relator quit his employment and does not meet any statutory exception to ineligibility under Minn. Stat. § 268.095, subd. 1 (2018), we affirm.

FACTS

Relator Bruce K. Rankila worked as a senior executive assistant for respondent Fairview Heath Services (Fairview) from October 31, 2011, until August 25, 2017. Before August 2017, Fairview had placed Rankila "on and off performance improvement plans" and had disciplined him.

On August 10, 2017, C.N. and C.J., who both worked in human resources at Fairview, met with Rankila "to discuss a complaint about Rankila that was made by a coworker." During the meeting, C.N. and C.J. told Rankila that he could "either resign or he would receive a corrective action and be placed on a final warning." C.N. and C.J. did not tell Rankila that he would be "discharged," although "[i]t was made clear to Rankila that he might be discharged in the future if he continued to have performance issues." Rankila replied that, "I don't [want] to work where I'm not wanted. So I'll choose to leave." C.N. and C.J. understood Rankila to mean that "he intended to quit his employment." C.N. told Rankila to take a few days to think about his decision.

“Decision-making leave” is the final step of Fairview’s corrective-action process. When performance issues are not corrected by the process, Fairview then asks “the employee to take a couple of days to think about whether [the job] is a good fit for them or not, and if they are ready to, then continue to work towards employment . . . or leave the organization.”

On August 14, C.N. spoke with Rankila about “how [he] would tie up loose ends before his intended quit date.” Rankila “did not indicate that he changed his mind or that he intended to stay employed with Fairview.” Rankila worked his last day at Fairview on August 25, 2017.

Fairview paid Rankila his salary through September 22. Fairview kept Rankila on casual status through the remainder of the year should Fairview have had questions after his replacement started. Fairview did not reach out to Rankila during the time he was on casual status. Nor did Fairview pay him to be on casual status.

Rankila applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). DEED determined that Rankila was ineligible for unemployment benefits and Rankila appealed the ineligibility determination.

The ULJ conducted an evidentiary hearing and C.N. and C.J. testified for Fairview, describing the facts summarized above. Rankila also testified, and stated that he did not think that he had “a choice” to stay employed at Fairview. Rankila stated that, during the August 10 meeting, he was told he had “two options. You can leave now, take unemployment and your vacation time, or wait a minute, then get nothing.” Rankila testified that if he “thought there was a choice of [him] staying, [he] probably would have

stayed,” but because he did not know that was an option, he decided to leave. Rankila also testified that he was “bull[ied]” by C.J. and other employees at Fairview.

The ULJ issued a written decision, finding that Rankila quit his employment with Fairview on August 25 because “he believed that he would be discharged in the future,” and therefore, he was ineligible for unemployment benefits. The ULJ also determined that Rankila’s belief did not constitute a good reason to quit caused by the employer.

Rankila requested reconsideration of the ULJ’s determination. Rankila asserted that “he quit his employment with Fairview for reasons that he did not bring up in the May 11 hearing,” namely, that he has a learning disability. The ULJ also understood Rankila to claim that he was subjected to unpleasant comments and jokes about his sexuality during his employment. The ULJ granted Rankila’s request for reconsideration, set aside its previous order and findings of fact, and scheduled a second evidentiary hearing to decide whether “Rankila is eligible for unemployment benefits.”

At the second evidentiary hearing, Rankila appeared, but Fairview did not participate. Rankila testified that his learning disability had impacted his ability to testify in the first hearing about why he ended his employment with Fairview. Rankila also briefly testified that other employees made “off the wall comments” or “jokes about being gay.” He testified to no details. And, Rankila again testified that he believed that he was not given the “option to stay at Fairview” during the August 10 meeting. Rankila also stated that he has “lived with HIV since 1995, and [he] would not leave a job with great insurance” unless he thought he had to. Finally, Rankila testified that he received severance payments for four weeks.

On June 29, 2018, the ULJ issued a written decision, determining that Rankila was ineligible for benefits. The ULJ stated that Rankila “did not make any new arguments that show that the findings of fact [] from the May 15 decision should be modified.” The ULJ rejected Rankila’s argument that he quit because he was subject to unpleasant comments and jokes about his sexuality during his employment, and concluded that a preponderance of the evidence showed that Rankila quit because he was concerned he would be discharged in the future. The ULJ explicitly found credible and relied upon Fairview’s witness testimony and written submissions. The ULJ determined that this was not an instance where an employee had a good reason to quit caused by the employer.

Rankila again filed a request for reconsideration. The ULJ denied this request, stating that Rankila’s request only repeated arguments made during the previous evidentiary hearings. Specifically, the ULJ recognized that Rankila claimed that the Fairview witnesses had “lied” during their testimony. The ULJ reiterated that it credited the employer’s evidence. The ULJ observed that Rankila also made an “equity argument” that he was “paid a full benefit account” before DEED found him ineligible. But the ULJ rejected this argument because Rankila received benefits after stating on his application that he “had been laid off due to lack of work.” Accordingly, the ULJ “determined that the decision of June 29, 2018, is factually and legally correct” and Rankila was not eligible for benefits. This certiorari appeal follows.

D E C I S I O N

Rankila argues that the ULJ erred in finding him ineligible for unemployment benefits. When reviewing a ULJ’s decision, this court may affirm the decision of the ULJ,

remand the case for further proceedings, or reverse and modify the decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is affected by an error in law or is unsupported by substantial evidence. *See* Minn. Stat. § 268.105, subd. 7(d) (2018).¹ This court views the ULJ’s factual findings in the light most favorable to the decision, deferring to the ULJ’s credibility determinations. *Wiley v. Robert Half Int’l, Inc.*, 834 N.W.2d 567, 569 (Minn. App. 2013). But whether a statutory exception to ineligibility applies is a question of law that this court reviews de novo. *See Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

I. Substantial evidence supports the ULJ’s decision that Rankila quit his employment.

A person who quits employment is ineligible for unemployment benefits unless he meets a statutory exception to that ineligibility. *See* Minn. Stat. § 268.095, subd. 1. Whether a person quit or was discharged from employment is a question of fact, a finding that this court will not disturb as long as it is substantially supported by the evidence. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

“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) (2018).

¹ DEED asserts that the standard of review requires this court to accept the findings of the ULJ, provided that there is evidence in the record that “reasonably tends to sustain them.” DEED relies, in part, on *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). As this court has stated, we “discern no inconsistency between Minn. Stat. § 268.105, subd. 7(d)(5) and the standard articulated by the supreme court in *Wilson*.” *See Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 n.4 (Minn. App. 2018).

In contrast, a discharge 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) (2018). “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, has quit the employment.” *Id.*, subd. 2(c) (2018); *see Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 333 (Minn. App. 2009) (“[A]n employee can receive a notice of discharge and then proceed to end his employment before the discharge is effective. When this happens, the employee is considered to have quit his employment.”).

Substantial evidence supports the ULJ’s decision that Rankila quit his employment with Fairview. Both C.J. and C.N. testified that they told Rankila during the August 10 meeting that he could choose to stay at Fairview. If Rankila decided to stay at Fairview after his “decision-making leave,” both C.J. and C.N. testified that Rankila would have been required to continue with a corrective-action plan. Thus, based on the testimony deemed credible by the ULJ, continued employment was available for Rankila if he decided to stay. *See* Minn. Stat. § 268.095, subd. 2(c).

We will not second guess the ULJ’s credibility finding unless the ULJ fails to provide reasoning for its finding. Minn. Stat. § 268.105, subd. 1a(a) (2018) (“When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.”). In this case, the ULJ stated that she found Fairview’s witness testimony and written submissions more credible because they were “corroborated by two witnesses

with firsthand knowledge and because they were a more logical chain of events.” Therefore, we accept the ULJ’s determination that Fairview’s evidence was credible.

And, most importantly, Rankila himself testified that he was not discharged during the August 10 meeting. Rankila stated that he believed he would “eventually” be fired by Fairview and that he was told that he could “leave now or leave later.” This court has previously rejected claims for unemployment benefits where an employee quit in anticipation of future potential termination. *See Erb v. Comm’r of Econ. Sec.*, 601 N.W.2d 716, 718-19 (Minn. App. 1999) (noting that because the relator “was in complete control of her employment circumstances” when she made the decision to end her employment, she quit and was disqualified from benefits).

Still, Rankila argues that he did not quit his employment because Fairview moved him to casual status and then prevented him from completing his casual-status term. Minnesota law provides that:

An employee who gives notice of intention to quit the employment and is not allowed by the employer to work the entire notice period is discharged from the employment as of the date the employer will no longer allow the employee to work. If the discharge occurs within 30 calendar days before the intended date of quitting, then, as of the intended date of quitting, the separation from employment is a quit from employment subject to subdivision 1.

Minn. Stat. § 268.095, subd. 5(d) (2018). Rankila contends that Fairview asked him to go on casual status through the end of the year and he “believed he would receive money and health insurance benefits until December 31, 2017.” Rankila argues that Fairview paid him regular wages through September 22, and then made a final payment on October 9 for

unused vacation time. Accordingly, Rankila asserts that his final day of work at Fairview was October 8, 2017, and argues that, because he was not allowed to work until December 31, this separation from employment should be considered a discharge.

We need not address this argument because Rankila raises it for the first time on appeal to this court. Rankila did not argue to the ULJ that he worked at Fairview after August 25, 2017. In fact, Rankila testified at the first hearing that his “last date” of employment was August 25. Generally, we do not decide issues that were not raised to and considered by the ULJ. *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); *Peterson v. Ne. Bank-Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (“[B]ecause this issue was not raised before the ULJ, it is not properly before this court on review.”).

Even if Rankila had raised this issue to the ULJ, Fairview did not prohibit Rankila from working through the notice period, as defined by the statute. *See* Minn. Stat. § 268.095, subd. 5(d). The ULJ found that Rankila gave notice to quit during the August 10 meeting, then worked the final two weeks of his employment, until August 25, 2017. The record supports this finding, which is not clearly erroneous.

Finally, the record evidence does not support Rankila’s assertion that he continued working after August 25 and was paid to be on casual status. Rankila testified at the second evidentiary hearing that Fairview made a severance payment during the final four weeks that he received compensation. Therefore, these payments were not, as Rankila claims in his brief to this court, payments for work performed while on casual status. In addition,

Rankila's claim that he thought he would continue working at Fairview until December 31 conflicts with his responses to an unemployment insurance request for information. In that document, Rankila stated that the last day he worked was August 25, 2017, and that he received severance pay until September 28, 2017.² The ULJ's quit determination is not clearly erroneous based on record evidence that Fairview accepted Rankila's decision to quit, placed him on casual status, and then did not call him into work during the casual-status period.

Thus, we conclude that substantial evidence supports the ULJ's determination that Rankila quit employment with Fairview.

II. The statutory good-cause exception to ineligibility does not apply.

Rankila argues that he is eligible for unemployment benefits because he was discharged for reasons other than employment misconduct. Although Rankila frames this issue around "employment misconduct," the relevant exception for determining Rankila's eligibility for benefits is whether he had good reason to quit caused by his employer. "[W]hether an employee had good reason to quit is a question of law reviewed de novo." *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

A person who quits employment is ineligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1. One exception allows

² In its addendum to its brief to this court, DEED provided a document titled "Initial Questions" where Rankila stated that he was not working or receiving income for the weeks of "August 27, September 3, 10, 17, 24, and October 1 and 8, 2017." This document is not in the appellate record, and thus, we do not consider it. *See* Minn. R. Civ. App. P. 110.01; *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 709 n.1 (Minn. App. 2010).

a person who quit “because of a good reason caused by the employer” to receive unemployment 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) (2018). The statute specifically provides that “[n]otification of discharge in the future . . . is not a good reason caused by the employer for quitting.” *Id.*, at subd. 3(e) (2018); *see generally* *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 884 n.4 (Minn. App. 2012) (distinguishing a situation involving a notification of future discharge, which is not a good reason to quit, from a situation where the employer reduced an employee’s hours and encouraged her to quit and work as an independent contractor, which was a good reason to quit).

Here, the ULJ found that Rankila quit because he feared he would “eventually” be fired by Fairview. This is not a good reason to quit. *See* Minn. Stat. § 268.095, subd. 3(e). Thus, we affirm the ULJ’s determination that Rankila is not eligible for unemployment benefits.

Affirmed.