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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1686**

Interplastic Corporation,
Relator,

vs.

Kevin Rausch,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 24, 2019
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 36589253-2

Ivan M. Levy, St. Paul, Minnesota (for relator)

Kevin Rausch, Rush City, Minnesota (*pro se* respondent)

Lee B. Nelson, Anne Froelich, St. Paul, Minnesota (for respondent department)

Considered and decided by Cleary, Presiding Chief Judge; Ross, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Kevin Rausch worked for the Interplastic Corporation for 32 years. He quit his
employment in April 2018 because Interplastic reduced his hourly wage by 18 percent,

because his supervisor had told him that he would not receive any pay raises in the future, and because he entered into a settlement agreement with Interplastic in a pending workers' compensation case in which the parties agreed that he would resign his employment. An unemployment law judge determined that, despite quitting, Rausch is eligible for unemployment benefits because he quit his employment for a good reason caused by his employer. We affirm.

FACTS

Rausch was employed by Interplastic from February 1986 to April 2018. In 2011 or 2012, he injured his back while working in the position of pilot plan operator. His hourly wage at that time was \$23.79. Because Rausch's injury prevented him from continuing to work as a pilot plan operator, he transitioned to the position of laboratory technician in April 2013. He continued to receive the same wage, and he received pay raises over the next three years.

In January 2018, Interplastic's legal department sent Rausch a letter stating that his hourly wage would be reduced from \$25.58 to \$20.96 so that it would be aligned with the median wage for a laboratory technician in the national and Twin Cities markets. In March 2018, Rausch's supervisor informed him that he would not receive any pay raises in the future.

Meanwhile, Rausch had a pending workers' compensation claim arising from his back injury. In April 2018, Rausch and Interplastic entered into a settlement agreement in which Interplastic agreed to pay Rausch \$25,000, and Rausch agreed "to voluntarily terminate his employment." The stated purpose of the agreement was "to resolve all

potential employment disputes, if any, between the parties relating to and arising from Rausch's employment with Interplastic or severance of employment with Interplastic." The agreement also stated, "Notwithstanding the generality of this Release, this waiver and Release does not include claims under Minn. Stat. Ch. 268 (unemployment insurance benefits). Interplastic makes no representation or promises as to Rausch's eligibility for unemployment insurance benefits."

In June 2018, Rausch requested unemployment benefits. The department of employment and economic development determined that he is ineligible because he voluntarily quit his employment and did not satisfy any of the statutory exceptions to the general rule that a person who quits employment is ineligible for benefits. Rausch filed an administrative appeal. He argued that he satisfies a statutory exception to ineligibility because of the drastic reduction in his wage and his supervisor's statement that he would not receive any future pay raises.

In July 2018, an unemployment law judge (ULJ) conducted a hearing. Rausch testified that he felt that he was "forced out" of his employment at Interplastic and that he "eventually . . . would have been fired" if he had not signed the settlement agreement. He also testified that, after Interplastic reduced his pay, he consulted a lawyer, who tried to help him obtain a different position at Interplastic at his previous rate of pay, but Interplastic would not agree. Rausch further testified that, despite an excellent performance review, his supervisor told him in March 2018 that, according to the company's management, he never would receive a pay raise.

Deanna Keefe, the director of human resources for Interplastic, testified that Rausch's wage was reduced in January 2018 "to get him in line with the rest of the people that do [the laboratory technician] job." Keefe also testified that she did not know whether Rausch was told that he would not receive a raise in the future. Keefe further testified that the settlement agreement was handled by the company's legal department and that she did not know whether Rausch would have been allowed to continue working at Interplastic if he had not signed the agreement.

The ULJ issued a written decision in which he reversed the department's initial determination and concluded that Rausch is eligible for unemployment benefits because he quit his employment for a good reason caused by the employer. The ULJ found that Interplastic "reduced Rausch's hourly pay from \$25.56 to \$20.96, which was an 18 percent reduction." The ULJ also found, "In March 2018, Rausch was notified that he would not be eligible for any raises because he was at the top of the pay scale for his position." The ULJ further found that Rausch quit for three reasons: (1) "the reduction in pay," (2) "the lack of any future raises," and (3) "to accept a settlement agreement." The ULJ found that Rausch's testimony "was credible because it was direct, consistent, and plausible" and stated that Keefe "did not provide any evidence to refute Rausch's testimony." The ULJ concluded that the pay reduction and the lack of any future raises "were key factors in Rausch's decision to sign the agreement and quit the employment" and "were adverse to Rausch and would cause an average, reasonable worker to quit and become unemployed." Interplastic requested reconsideration. In September 2018, the ULJ issued an order affirming his earlier decision. Interplastic appeals by way of a writ of certiorari.

DECISION

Interplastic argues that, for three reasons, the ULJ erred by concluding that Rausch is eligible for unemployment benefits on the ground that he quit his employment for a good reason caused by the employer.

The unemployment insurance program provides workers “who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed.” Minn. Stat. § 268.03, subd. 1 (2018). A person who quits his or her employment generally is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2018). But an employee is eligible for benefits despite quitting if he or she “quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). A good reason caused by the employer 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). These three requirements “must be applied to the specific facts of each case.” *Id.*, subd. 3(b).

This court reviews a ULJ’s decision regarding eligibility for unemployment benefits to determine whether the findings, inferences, conclusion, or decision are affected by an error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. *See* Minn. Stat. § 268.105, subd. 7(d) (2018). We view the ULJ’s

factual findings “in the light most favorable to the decision” being reviewed and give “deference to the credibility determinations made by the ULJ.” *Peterson v. Northwest Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Consequently, this court “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.* The ULJ’s conclusion as to whether an employee is eligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Thao v. Command Ctr., Inc.*, 824 N.W.2d 1, 4 (Minn. App. 2012).

A.

Interplastic first contends that the ULJ erred on the ground that his decision is contrary to this court’s opinion in *Edward v. Sentinel Management Co.*, 611 N.W.2d 366 (Minn. App. 2000). In that case, an employee sought unemployment benefits after resigning from his job pursuant to a workers’ compensation settlement agreement. *Id.* at 367. The department determined that he did not quit for a good reason caused by the employer. *Id.* On appeal, this court affirmed, reasoning that the employee “had the option of remaining employed and continuing to pursue his workers’ compensation claim.” *Id.* We noted that the employee did not “argue that he felt economically coerced into accepting the settlement terms,” and we emphasized that the employee accepted the settlement “for personal reasons that were only indirectly related to his employment.” *Id.* at 368-69. We also stated in a footnote, “We do not imply that an employee who must resign in order to obtain a workers’ compensation settlement agreement could never have good reason to quit.” *Id.* at 369 n.1.

Interplastic contends that, in light of *Edward*, “the only test . . . is whether Rausch had the option of remaining employed and continuing to pursue his worker’s compensation claim” and that a ULJ may not consider other circumstances. We do not interpret *Edward* to have established such a rule of law. In fact, our comment in the footnote expressly states that a workers’ compensation settlement agreement is not dispositive of an employee’s eligibility for unemployment benefits. The *Edward* opinion may be read to say that an employee who quits *solely because* he or she voluntarily entered into a settlement agreement is ineligible for unemployment benefits. But in this case, the ULJ expressly found that Rausch quit for three reasons, only one of which is the settlement agreement and two of which relate to matters independent of the settlement agreement. The ULJ emphasized that Rausch’s pay cut and the notice that he would not receive any future pay raises “were key factors in his decision to quit in April 2018.” Accordingly, the *Edward* opinion is distinguishable. Thus, the ULJ did not err on the ground that his decision is contrary to the *Edward* opinion.

B.

Interplastic also contends that the ULJ erred by considering Rausch’s reduction in pay even though he quit his employment more than 30 days after his wage rate was reduced. Interplastic relies on the third of ten exceptions to the general rule that a person is ineligible for unemployment benefits if he or she quits employment, which provides that a person is not ineligible if he or she “quit the employment within 30 calendar days of beginning the employment and the employment was unsuitable.” See Minn. Stat. § 268.095, subd. 1(3).

Interplastic's contention is without merit because it is illogical. The fact that an employee cannot satisfy one of ten exceptions to the general rule of ineligibility does not necessarily mean that the employee is ineligible. Such an employee may be eligible if he or she can satisfy any of the other nine exceptions. In this case, the ULJ found that Rausch satisfies the first exception, that he "quit the employment because of a good reason caused by the employer." *See id.*, subd. 1(1). If Interplastic cannot establish that the ULJ erred in determining that Rausch has satisfied the first exception to ineligibility, it is irrelevant whether Rausch cannot satisfy the third exception to ineligibility. Thus, the ULJ did not err by considering Rausch's reduction in pay and not finding Rausch ineligible for not satisfying the third exception to ineligibility.

C.

Interplastic last contends that the ULJ erred on the ground that the evidence in the record does not support the ULJ's finding that Rausch would not receive any future pay raises. Interplastic contends that the evidence shows that the company does not give annual raises as a matter of course, that Rausch's supervisor did not have authority to determine his wage rate, and that the employee handbook instructs employees to disregard any communication concerning compensation that is not in writing and not approved by an executive officer.

Before considering the evidence, it is necessary to identify precisely the relevant finding. The ULJ found that "Rausch was *notified that* he would not be eligible for any raises because he was at the top of the pay scale for his position." (Emphasis added.) The ULJ did not attempt to determine whether the information communicated to Rausch by his

supervisor was true or untrue. But the ULJ found that Rausch relied on that information when deciding to quit his employment. We construe Interplastic's brief to contend that the ULJ clearly erred by finding that Rausch was informed by his supervisor that he would not receive future pay raises and that such information motivated his decision to quit. The finding is supported by the record. Rausch testified that his supervisor informed him in March 2018 that, according to upper management, he would never receive a pay raise. The company's sole witness did not contradict Rausch's testimony on that issue; she testified that she did not know whether Rausch's supervisor told him that he would not receive any future pay raises. Rausch also testified that, after learning that he would never receive a pay raise, he decided to quit his employment at Interplastic. The ULJ expressly found Rausch's testimony to be credible, and we give deference to this credibility determination. *See Peterson*, 753 N.W.2d at 774.

The contrary evidence on which Interplastic relies was not introduced into the record during the hearing. Interplastic later submitted additional evidence on the issue when it requested reconsideration. But such evidence was submitted too late to be considered and, thus, is not part of the record on appeal. "In deciding a request for reconsideration, the [ULJ] must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing." Minn. Stat. § 268.105, subd. 2(c) (2018). Interplastic did not request an additional hearing, and even if it had pursued an additional hearing, we doubt that it could have satisfied the applicable criteria. *See id.* Thus, the ULJ did not err by finding that Rausch was informed

that he would not receive any future pay raises and that the information motivated his decision to quit his employment.

In sum, the ULJ did not err by concluding that Rausch is eligible for unemployment benefits on the ground that he quit his employment for a good reason caused by his employer.

Affirmed.