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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2030**

Charles R. Stenger,
Relator,

vs.

Minnesota Wire & Cable Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2019
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 36745960-3

Charles R. Stenger, Mendota Heights, Minnesota (*pro se* relator)

Minnesota Wire & Cable Company, St. Paul, Minnesota (respondent employer)

Sasha E. Mackin, Department of Employment and Economic Development, St. Paul,
Minnesota (for respondent department)

Considered and decided by Halbrooks, Presiding Judge; Slieter, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SLIETER, Judge

In this unemployment-benefits appeal, relator-employee challenges a decision by an unemployment-law judge (ULJ) that relator is ineligible for benefits because he quit his employment and he did not satisfy an exception to ineligibility for quitting. Relator asserts that he did not quit his employment but that his employer forced him to resign by presenting him with a performance-improvement plan (PIP). Relator also argues the ULJ's findings omitted relevant facts. Because the relator refused to comply with the PIP and, instead, resigned, the ULJ properly concluded that the relator was not forced to resign by actions of his employer. Therefore, we affirm the decision of the ULJ.

FACTS

Relator Charles R. Stenger began employment for respondent Minnesota Wire and Cable Company (Minnesota Wire) on November 3, 2003, after previously working for the company between 1989 and 1998. Minnesota Wire is a manufacturer of cable harnesses for medical and defense purposes. Relator worked full-time as a strategic-sourcing manager, which involved purchasing raw materials, capital equipment, and insulant.

On June 13, 2018, relator attended a meeting with three higher ranking Minnesota Wire employees during which he received a PIP. Prior to this meeting, relator "had not received any formal discipline or warnings from the company." The PIP began with the following introductory statements.

[Relator], this performance improvement plan is focused on your specific job responsibilities and the require [sic] attention to and performance improvement on them. We

will state the responsibility, describe our expectation of your needed performance, track your progress and measure the specific improvements required to meet minimum expectations.

[Relator], this is a very serious situation and requires your complete cooperation and attention. We expect your improvement. Not meeting these minimum requirements could result in disciplinary action up to and including termination.

The PIP called for relator to participate in weekly team meetings, complete daily and weekly reports with sourcing information for the team's review, and provide up-to-date information at meetings.

Relator asked if he was being disciplined to which he was told no. Relator objected to the PIP and asked to do a "step plan" instead. Minnesota Wire stated that it was not interested in that alteration to the plan. Relator indicated that he would resign before signing the PIP. Minnesota Wire immediately accepted the resignation and prepared a letter for his signature. Relator signed the resignation letter approximately ten minutes after the meeting ended, indicating his last day would be July 26, 2018.

On June 22, 2018, relator informed Minnesota Wire that he did not want to resign but that the PIP would need to be restructured. In particular, relator requested to remove the portion of the PIP that stated it was "a very serious situation and requires your complete cooperation" because it "sound[ed] like there's a preexisting problem." Minnesota Wire refused to make modifications to the PIP but agreed to extend relator's employment until August 31, 2018.

The department of employment and economic development (DEED) denied relator's application for unemployment benefits. Relator appealed. Following a hearing on October 2, 2018, a ULJ found that relator quit his job without good cause. On November 6, 2018, the ULJ issued a modified decision following relator's request for reconsideration, correcting factual determinations but affirming that relator was not eligible for benefits. Relator appeals by writ of *certiorari*.

D E C I S I O N

Pursuant to Minn. Stat. § 268.105, subd. 7(d) (2018), this court reviews a ULJ's decision and may affirm, remand, reverse, or modify the decision. For this court to reverse or modify a ULJ decision, it must determine:

[I]f the substantial rights of the petitioner may have been prejudiced because of the findings, inferences, conclusions, or decision are:

- (1) in violation of the constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d). This court will affirm if “[t]he ULJ’s findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination.” *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making credibility determinations). “This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a

result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008).

The Minnesota Legislature created the unemployment-insurance program to provide for persons “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). If a person quits employment, they become ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2018). A person quits employment “when the decision to end the employment was, at the time the employment ended, the employee’s.” *Id.*, subd. 2(a) (2018). If an employee provides a “notice of quitting in the future” that notice:

[D]oes not constitute a quit at the time the notice is given. An employee who seeks to withdraw a previously submitted notice of quitting in the future has quit the employment, as of the intended date of quitting, if the employer does not agree that the notice may be withdrawn.

Id., subd. 2(d) (2018). In contrast, an employee is discharged by the employer “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).

I. The ULJ’s omission of factual findings requested by relator does not provide a basis for reversal.

Relator contends that the ULJ omitted factual findings from its decision that would be beneficial to him. In making this argument, relator does not cite to any law in support of his claim for reversal. We construe this challenge as a procedural error argument.

A ULJ “must assist all parties in the presentation of evidence.” Minn. R. 3310.2921 (2017). Also a ULJ “must ensure that all relevant facts are clearly and fully developed.” *Id.* For a full development of facts, the ULJ may “obtain testimony and other evidence from department employees and any other person the judge believes will assist the judge in reaching a proper result.” *Id.* A ULJ’s decision must consist of written factual findings and reasoning, and must address any credibility determinations made that affect the decision. Minn. Stat. § 268.105, subd. 1a(a) (2018); *see also Gerson v. Comm’r of Econ. Sec.*, 340 N.W.2d 353, 355 (Minn. App. 1983) (“Effective judicial review requires an adequate formulation of a record and findings.”).

The ULJ addressed the findings that relator identifies as omitted or missing from its decision in its reconsideration decision. The ULJ explained that it either found the information unsupported by the record, irrelevant to the issues, or contained in the decision itself. We conclude that the ULJ’s decision to not include certain findings requested by relator does not provide a basis for reversal.

II. The ULJ did not err by determining relator quit his employment without good cause.

“Whether an employee has been discharged or voluntarily quit is a question of fact.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation

omitted). A “determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Id.* We defer to the ULJ’s credibility determinations. *Wiley v. Robert Half Int’l, Inc.*, 834 N.W.2d 567, 569 (Minn. App. 2013).

“An employee cannot quit under Minn. Stat. § 268.095, subd. 2(a), unless the employee makes the decision to end the employment. An employee cannot ‘unintentionally’ quit employment.” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 667 (Minn. App. 2016); *see also* Minn. Stat. § 268.095, subd. 2(b) (2018) (“When determining if an applicant quit, the theory of a constructive quit does not apply.”). Whether a person quits or is discharged from employment is a question of fact, and will not be disturbed so long as it is substantially supported by the evidence. *Nichols*, 720 N.W.2d at 594.

The ULJ found that when Minnesota Wire provided the PIP to relator he refused to sign it and indicated his desire to resign instead. Minnesota Wire accepted relator’s resignation and drafted a resignation letter that day, which relator signed. Relator’s decision to adopt the language of the resignation letter by his signature constitutes a conscious decision to end his employment with Minnesota Wire in exchange for not having to agree to the terms of the PIP. *Posey*, 879 N.W.2d at 667. The ULJ determined relator quit his employment on August 31, 2018, his last day of employment with Minnesota Wire, because relator refused to agree to the PIP. The record supports this finding.

Relator contends—by incorporating a claim that Minnesota Wire engaged in behavior that would justify his decision to quit—his resignation was forced. An employee

may have a good reason to quit caused by the employer which entitles the employee to unemployment benefits. Minn. Stat. § 268.095, subd. 3 (2018). Pursuant to section 268.095, subdivision 3(a):

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.

“The issue of whether 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 good reason to quit is one that is real, not imaginary, substantial, not trifling, and reasonable, not whimsical. The standard is reasonableness as applied to the average man or woman, and not to the supersensitive.” *Hein v. Precision Assocs., Inc.*, 609 N.W.2d 916, 918 (Minn. App. 2000) (quotations and citation omitted).

An analogous circumstance arose in *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206-07 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004), where this court held that an employee’s refusal to participate in a reasonable PIP constituted employment misconduct that disqualified that employee from unemployment benefits. In *Vargas*, an employer presented a PIP to its employee that stated he would cooperate with the plan but the employee did not fulfill the requirements. 673 N.W.2d at 204. The employee admitted he did not intend to comply with the plan which resulted in his termination. *Id.* This court recognized the “intentional refusal to attempt any part of the improvement plan demonstrate[d] that he consciously disregarded his duties and obligations” which an

employer reasonably can expect to be followed. *Id.* at 206. Vargas argued the plan imposed unreasonable burdens on him, which this court rejected. *Id.* at 207.

Unlike in *Vargas*, relator refused to engage in the PIP and, instead, offered his resignation. Relator reasons his decision to refuse the PIP was supported by its use of “incriminating statements,” and the plan violated the company protocol. The ULJ explained why relator’s claim is unavailing.

The preponderance of the evidence shows that [relator] did not quit his job because of a good reason caused by the employer. [Relator] quit his job because he was given a performance improvement plan to sign on June 13, 2018. [Relator] objected to the plan for two reasons. One he felt that it suggested that his performance had been poor. This was not a good reason to quit. It is normal for an employers to have concerns about an employee’s job performance, and the language in the performance improvement plan was mild and measured.

Second, [relator] thought the expectations in the plan were unreasonable, and it would be difficult to create the daily and weekly reports that they were demanding. Unreasonable demands from the employer could potentially be a good reason to quit. However, the exact expectations around these reports, and the timeline on when [relator] had to be doing them were not clear. [Relator] gave his notice [to] quit before he even tried to comply with his employer’s demand and figure out the details of what was required. Because [relator] quit before trying to comply with his employer’s demands, it was not a good reason to quit caused by the employer.

Accordingly, [relator] did not quit for a good reason caused by the employer.

Although the PIP required that relator meet certain minimum expectations and it was a “very serious situation” that required relator’s “complete cooperation and attention” it is unlikely that these statements would prompt an average, reasonable employee to leave

their employment. The PIP identified expectations to be improved and the metrics to determine if he improved. Even with the particular language in the plan identifying the need for relator to comply, the average, reasonable worker would presumably attempt to comply with a PIP to continue to retain their employment.

Moreover, the ULJ addressed the concern identified in *Vargas* that a PIP may be unreasonable which could support a good reason to quit. 673 N.W.2d at 206-07. Although relator identified concerns with the expectations of the PIP, the ULJ noted those expectations and timeframes to begin completing these tasks “were not clear.” An average, reasonable, employee would attempt to meet the employer’s PIP with the expectations identified to determine the reasonableness of the plan. If the PIP was unreasonable, then the employee may have a claim that their employer forced their decision to quit. Relator, however, did not present sufficient evidence to allow the ULJ to find the plan unreasonable. We conclude the ULJ did not err by finding relator lacked good cause to quit his employment with Minnesota Wire and that, therefore, he is not eligible for unemployment benefits.

Affirmed.