

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-2032**

Eric Robert Mitzuk,  
Relator,

vs.

Davlyn Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 3, 2019  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
Case No. 36658152-3

Eric R. Mitzuk, St. Paul, Minnesota (pro se relator)

Keri A. Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Johnson, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Erik Mitzuk challenges an unemployment law judge's (ULJ's) determination that he is not eligible for unemployment benefits after he failed to report to work or notify his

employer that he would be absent. He argues that the ULJ erroneously found that he quit, failed to develop the record, and improperly rejected his request for another evidentiary hearing. Because the ULJ's decision is supported by sufficient evidence, because the record was adequately developed, and because the ULJ appropriately rejected Mitzuk's request for an additional hearing, we affirm.

## **FACTS**

Erik Mitzuk began working at Davlyn Inc. as a desk laborer in February 2017. Mitzuk's final day of work was March 9, 2018. Mitzuk filed for unemployment benefits on July 20, 2018, but was deemed ineligible. Mitzuk appealed, and a hearing was held before a ULJ.

According to a ULJ's factual findings, on March 10, 2018, Gary Andert, Davlyn's owner, caught the company's operations manager attempting to download company trade secrets onto a laptop. He called Davlyn's landlord and requested that he change the locks on the warehouse to prevent the operations manager from accessing additional company data. He also hired a security guard to patrol the warehouse.

On March 12, Mitzuk was scheduled to work, but he never showed up or informed anyone at Davlyn that he would be absent. No one at Davlyn could reach Mitzuk until the next month, when he collected his March paycheck. Mitzuk claims that he went to the warehouse on March 12 with the operations manager but that their keys did not open the door, the security guard told them to leave, and they were unable to contact anyone at Davlyn.

The ULJ found that Mitzuk quit his employment and could not receive unemployment benefits. Mitzuk requested reconsideration, arguing that the decision was not supported by sufficient evidence, the ULJ failed to develop the record, and he was entitled to an additional hearing. The ULJ affirmed, concluding that the decision was sufficiently supported, that the ULJ developed the record at the hearing, and that none of the additional documents submitted by either Mitzuk or Davlyn necessitated a second hearing.

Mitzuk appeals by writ of certiorari.

### **D E C I S I O N**

Mitzuk makes three arguments on appeal. He argues that the ULJ's decision is not supported by sufficient evidence, that the ULJ failed to develop the evidentiary record, and that the ULJ erroneously denied his request for an additional hearing. None of his arguments succeed.

The ULJ's decision was supported by substantial evidence. We can reverse or modify a ULJ's decision if it was "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2018). We review the ULJ's factual findings in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014), *review denied* (Minn. July 15, 2014). The ULJ heard testimony from Gary Andert, Mitzuk, and Davlyn's operations manager. The ULJ found that Gary Andert's testimony was "straightforward, plausible, and consistent," while Mitzuk's was generally implausible and conflicted with the operations manager's testimony. Mitzuk merely

highlights the same conflicting accounts that the ULJ considered. We do not reweigh evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We see no clear error in the ULJ's believing Gary Andert's testimony.

Gary Andert's testimony supports the ULJ's finding that Mitzuk quit his job. An employee quits if he chooses to end his employment. Minn. Stat. § 268.095, subd. 2(a) (2018). Gary Andert testified that Mitzuk did not show up for work on March 12 and contacted neither Gary Andert nor anyone else within the company to explain his absence. This testimony supports the ULJ's finding that Mitzuk quit and is not eligible for unemployment benefits.

We reject Mitzuk's argument that the ULJ erred by failing to help him during the evidentiary hearing. A ULJ is obligated to aid the parties in the presentation and development of evidence. Minn. R. 3310.2921 (2017). We may reverse a ULJ's decision if it is "made upon unlawful procedure." Minn. Stat § 268.105, subd. 7(d)(3) (2018). We are unconvinced by Mitzuk's argument that the ULJ failed to help him during the evidentiary hearing by not *sua sponte* calling Alex Andert, a Davlyn employee, to testify. A ULJ may obtain additional testimony that she believes will aid in her decision. Minn. R. 3310.2921. The ULJ asked questions about Alex Andert's involvement in the events and heard nothing suggesting that he knew anything about whether Mitzuk quit. Neither Mitzuk nor the operations manager testified that Alex Andert was present when Mitzuk claims he was barred entry from the warehouse. And although Mitzuk did testify that he spoke with Alex Andert after March 12, he also testified that they did not discuss why he had not come back to work. The ULJ sufficiently aided Mitzuk in developing the record.

The ULJ did not improperly fail to convene an additional evidentiary hearing. We will reverse a ULJ's decision to deny a request for an additional evidentiary hearing only if the decision constitutes an abuse of discretion. *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010). An additional hearing must be ordered if a party shows that evidence that was not submitted at the hearing

(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or

(2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c)(1)–(2) (2018).

Mitzuk contends that the evidence he submitted in support of his reconsideration request would change the outcome of the decision because it would prove that Gary Andert was lying. Mitzuk presented no evidence to the ULJ substantiating his argument. Mitzuk refers to documents that were not provided to the ULJ, and we cannot consider them on appeal. Minn. R. Civ. App. P. 110.01. The ULJ did not abuse her discretion by denying Mitzuk's request for an additional hearing.

**Affirmed.**