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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1583**

Trevor Hogan,
Relator,

vs.

O’Laughlin Trucking & Excavating, Mechanical LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 7, 2021
Affirmed
Bryan, Judge**

Department of Employment and Economic Development
File No. 39852471-3

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O’Laughlin Trucking & Excavating, Mechanical LLC, Winona, Minnesota (respondent employer)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this unemployment-compensation appeal, relator raises two challenges to an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits. First, relator argues that the ULJ applied an incorrect legal standard when the ULJ applied the statutory requirements of the exceptions to ineligibility. Second, relator contends that the ULJ erred in making the factual finding that relator quit on March 23, 2020. Because we conclude that relator forfeited the challenge to the legal standard applied and that substantial evidence supports the contested factual finding, we affirm the ULJ's decision.

FACTS

On January 1, 2016, relator Trevor Hogan began working as a carpenter for respondent O'Laughlin Trucking & Excavating, Mechanical LLC (the employer). On April 28, 2020, Hogan applied for unemployment benefits, stating that he was discharged on April 22, 2020. In response, the employer stated that Hogan was not discharged and that Hogan voluntarily quit on March 23, 2020. On May 12, 2020, respondent Department of Employment and Economic Development (DEED) determined that the employer discharged Hogan on March 23, 2020, and that Hogan was eligible for unemployment benefits. The employer appealed that determination. Following a hearing, the ULJ determined that Hogan was ineligible for unemployment benefits. Hogan requested reconsideration and the ULJ affirmed its decision. Given the issues on appeal, we

summarize the facts from the hearing, the ULJ's ineligibility determination, and Hogan's request for reconsideration.

At the hearing, the ULJ received testimony from Hogan and the employer's president, Kyle O'Laughlin. Both testified that Hogan generally worked at least 32 hours per week in carpentry and on other tasks as requested. Hogan was required to report to the employer's shop at the beginning of each work day, and from there, the employer would direct Hogan to a particular work site. Hogan would then drive alone in a company vehicle to the work site. On March 23, 2020, Hogan worked at three sites, the last of which involved remodeling a bathroom. Hogan worked for 45 minutes at the site but was unable to finish the work because the owners of the unit decided to quarantine due to COVID. In their testimony, both O'Laughlin and Hogan agreed that this was the last day Hogan performed any work. They disagreed, however, regarding what happened when Hogan returned to the shop.

According to Hogan, he told O'Laughlin that he was scared of COVID because he did not know how his body would react to it and that he was going to sign up for unemployment. Hogan stated that O'Laughlin sent him home at that point, and told him that there was no work for the following week. Hogan also testified he did not provide a doctor's note when requested because he could not afford to go see a doctor and wanted to take a picture of his medication instead. O'Laughlin's testimony contradicted Hogan's account of events on March 23, 2020. O'Laughlin testified that he was at home taking care of his child and not at the shop. In addition, O'Laughlin testified that Hogan actually met with the project manager and did not speak to O'Laughlin that day. O'Laughlin recollected

that Hogan told the project manager that Hogan was going to sign up for unemployment. O’Laughlin further testified that the project manager had no authority to discharge anyone and that contrary to Hogan’s testimony, Hogan could have worked the rest of that week if he had wanted to.

The parties also testified to the general working conditions and the events that occurred after March 23, 2020. O’Laughlin explained that the employer had implemented protocols to reduce the risk of transmission. For instance, the employer encouraged social distancing and stocked masks in a supply room at the shop as well as in the vehicles that Hogan and others drove to work sites. O’Laughlin testified that on March 31, 2020, he called Hogan to determine whether Hogan intended on ever coming back to work. According to O’Laughlin, Hogan answered that he was nervous and scared about COVID. O’Laughlin then told Hogan, “you’re working by yourself,” but Hogan refused to come to work because Hogan did not want to be around people. O’Laughlin again contacted Hogan on April 9, 2020, and told him that the employer had work for him if he wanted to come back to work. Hogan declined, saying that he was not coming back until COVID was gone and that he had chronic asthma. O’Laughlin testified that this was news to him and asked Hogan to provide a doctor’s note stating that he could not work. Hogan never did. The following week, O’Laughlin again contacted Hogan requesting that he return to work, but Hogan did not show up.

On April 20, 2020, O’Laughlin made contact with Hogan again and at this time, Hogan was willing to come back to work. Hogan testified that he asked O’Laughlin about COVID, and that O’Laughlin told him that the employer was taking it seriously and that

there would be masking and social distancing. On April 22, 2020, Hogan arrived at the shop and drove out to a work site. Hogan testified that he returned to the shop shortly after because there were no safety measures being practiced at the work site. Hogan told O’Laughlin that he could not work in such an environment, and following a verbal altercation, Hogan left the shop. Hogan testified that he did not clock his hours that day because he “didn’t do anything for them.”

Following the hearing, the ULJ determined that “[t]o the extent their testimony is in disagreement, [O’Laughlin’s] testimony is more credible than Hogan’s testimony, because it is a more likely explanation of events,” and “because it is more reliable and specific on dates and times.” The ULJ found that, in mid-March 2020, the employer had masks available in the safety supply room, Hogan had masks in his vehicle, and Hogan had used masks in the past. The ULJ found that on March 23, 2020, “Hogan told the project manager he was filing for unemployment and then stopped showing up for ongoing available work”; that “Hogan never returned to work”; and that on April 22, 2020, Hogan told O’Laughlin he had quit. The ULJ also found that, on March 23, 2020, “Hogan quit because he wanted to be on unemployment and not work during the COVID-19 pandemic.”

Having determined that Hogan quit employment on March 23, 2020, the ULJ then considered whether Hogan was eligible for unemployment benefits based on either the medical or good cause exception. The ULJ determined that “Hogan’s testimony about having asthma is not credible, because it is not corroborated by any reliable evidence and a negative inference is taken from his refusal to get any documentation for the employer.” The ULJ found that “[i]t was not medically necessary for Hogan to quit. Hogan did not

inform the employer of any medical problem and did not ask for an accommodation before he quit.” Thus, the ULJ concluded that the medical exception enumerated at Minnesota Statutes section 268.095, subdivision 1(7) (2020), did not apply. The ULJ also concluded that the good cause exception enumerated at Minnesota Statutes section 268.095, subdivision 3 (2020), did not apply because the employer did not treat Hogan in a manner that would compel an average reasonable worker to quit, there was no evidence the employer was violating any government regulations or orders about COVID, and Hogan was allowed to wear safety equipment and social distance. Accordingly, the ULJ determined that Hogan was ineligible for unemployment benefits.

On June 9, 2020, Hogan requested reconsideration, arguing that the ULJ made incorrect findings of fact. Specifically, Hogan made the following arguments: (1) the ULJ erred in finding that Hogan quit employment on March 23, 2020, because the employer called him regarding work on April 9 and 20, 2020; (2) the ULJ erred in finding that Hogan never returned to work because he was at the workplace on April 22, 2020; (3) the ULJ erred in finding that it was not medically necessary for Hogan to quit based on evidence that had not been presented previously (an attached doctor’s note indicating that Hogan has asthma and hypertension); and (4) the ULJ erred in finding that the employer had continuing work for Hogan after March 23, 2020, because he was required to stay at home pursuant to the governor’s stay-at-home order, *see* Emerg. Exec. Order No. 20-20, *Directing Minnesotans to Stay at Home* (Mar. 25, 2020) (EEO 20-20).

On November 23, 2020, the ULJ affirmed its decision. The ULJ reasoned, “Hogan does not show the new evidence would likely change the outcome of the decision and does

not show there was good cause for not having previously submitted that evidence.” The ULJ also stated that Hogan did not explain how the EEO 20-20 and the CARES Act “apply to his separation” and determined that “[t]here is no evidence that a health care professional or health authorities recommended Hogan should self-isolate or self-quarantine due to elevated risk from COVID-19.” Thus, the ULJ concluded that “[t]he evidence supports the decision and it is affirmed as factually and legally correct.” This certiorari appeal follows.

DECISION

I. Correct Legal Standard

Hogan argues that the ULJ erred by applying the statutory requirements for the exceptions to ineligibility. Instead, Hogan argues a different, but undefined, legal standard applies. Because Hogan did not challenge the legal standard or the applicability of the statutory requirements before the ULJ, we conclude that Hogan forfeited this argument.

“An applicant who quit employment is ineligible for all unemployment benefits,” subject to several exceptions. Minn. Stat. § 268.095, subd. 1 (2020). Each exception requires establishment of certain facts and elements. *E.g., id.*, subds. 1(1) (establishing exception for good reason caused by the employer), 1(7) (establishing exception for and listing requirements for exception due to serious illness or medical necessity), 3(a)-(g) (listing requirements for the good cause exception); *Werner v. Med. Pros. LLC*, 782 N.W.2d 840, 842 (Minn. App. 2010) (applying statutory requirements to a claim under the good cause exception), *rev. denied* (Minn. Aug. 10, 2010); *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38-39 (Minn. App. 2002) (applying statutory requirements to a claim under the medical necessity exception). Whether the ULJ applied the correct legal standard

presents a question of law, which we review de novo. *See Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 785 (Minn. App. 2011) (acknowledging that whether the district court applied the proper legal standard is subject to de novo review).

In March 2020, the governor declared a peacetime emergency pursuant to his authority under the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61 (2020). Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota’s Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). On March 16, 2020, the governor issued Emergency Executive Order No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 16, 2020) (EEO 20-05). On March 25, the governor issued the stay-at-home order, EEO 20-20. EEO 20-05 modified provisions of the unemployment statute to help mitigate the consequences of the COVID-19 pandemic on workers and employers. EEO 20-05 paragraph 1 states: “Effective immediately, strict compliance with Minnesota Statutes 2019, Chapter 268, Minnesota Unemployment Insurance Law is suspended.” For the first time, Hogan argues on appeal that EEO 20-05 not only suspended procedural deadlines, but also suspended the substantive statutory requirements that apply in order to satisfy the exceptions for good cause and medical necessity.¹ A party, however, cannot raise a new issue on appeal, “[n]or may a party obtain review by raising the same general issue litigated below but under a different theory,” and this court generally will not

¹ Hogan does not argue that he satisfied the statutory requirements for these exceptions. Instead, he argues that the ULJ erred in applying the requirements to his claim.

consider matters not argued to and considered by the ULJ. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Hogan raised several arguments before the ULJ and articulated additional reasons in support of his request for reconsideration. Hogan did not, however, make the argument that he now presents to this court. We acknowledge that Hogan generally referenced EEO 20-20 and the CARES Act in his request for reconsideration, but these general references were made in the context of Hogan's challenge to the employer's claim that it had available work for Hogan after March 23, 2020. Hogan did not request reconsideration on the basis that the ULJ applied the wrong legal standard. Hogan made no reference to EEO 20-05. Nor did he otherwise argued that the statutory requirements should no longer apply. Based on our review of the arguments raised below, Hogan accepted the applicability of the statutory requirements for the exceptions. Therefore, we deem the first argument presented to this court as forfeited and decline to address it further.

II. Quit Date

Hogan also argues that the ULJ erred in its factual determination that he quit his employment on March 23, 2020.² Because there is substantial evidence supporting the ULJ's determination, we cannot conclude that the ULJ erred in determining that Hogan quit employment on March 23, 2020.

"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) (2020).

² Although Hogan argued to the ULJ that he was involuntarily discharged, Hogan does not challenge the factual finding that he voluntarily quit his employment on appeal.

“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) (2020) (“When determining if an applicant quit, the theory of a constructive quit does not apply.”). The test for determining whether an employee has voluntarily quit is whether the employee directly exercises a free-will choice to leave the employment. *See Posey*, 879 N.W.2d at 665 (concluding that “the unemployment-benefit statute’s definition of ‘quit’ and the free-will-choice test are essentially identical”).

Whether an employee voluntarily quit employment is a question of fact. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *rev. denied* (Minn. Sept. 24, 2003). “This court reviews a ULJ’s findings of fact in a light most favorable to the decision, and will not disturb the findings so long as there is evidence in the record that substantially supports them.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 (Minn. App. 2018). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Posey*, 879 N.W.2d at 665 (quotation omitted). This court does not reweigh conflicting evidence and defers to ULJ’s credibility determinations. *See Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019).

In this case, the issue is not whether Hogan quit, but when. Hogan argues that the ULJ’s finding that Hogan quit on March 23, 2020, is in error because the employer continued to call Hogan, asking him to return to work. In addition, Hogan emphasizes the fact that he returned to work on April 22, 2020, when he went to the employer’s shop and drove to a work site. Hogan argues that these facts support a finding that he quit on April

22, 2020. Hogan relies on an interpretation of our holding in *Posey* to support this argument. We are not convinced for two reasons. First, we disagree that *Posey* compels reversal in this case. In *Posey*, the employee informed her employer that she could no longer work at one, specific work site for a client, and afterward did not return to work. *Posey*, 879 N.W.2d at 664. We concluded that substantial evidence did not support the ULJ's finding that the employee quit because we distinguished between one's refusal to work at one particular work site and one's refusal to work altogether. *Id.* at 667. The facts of this case are quite different from those in *Posey*. Hogan did not refuse to work at a particular site or for a particular client. Instead, Hogan stated that he was signing up for unemployment and then stopped showing up for work altogether. The important distinction in *Posey* is absent from the facts in this case.

Second, Hogan's argument misstates the standard of review. Hogan argues that the record supports a finding that he did not quit until April 22, 2020. Our standard of review, however, is not whether the record supports an alternative finding. Rather than reweighing conflicting evidence, we review the record in the light that is most favorable to the ULJ's decision. On March 23, 2020, Hogan informed a project manager that he was going to sign up for unemployment, and left work. Hogan does not dispute that he said he intended to sign up for unemployment. Nor does Hogan dispute the actual finding that he stopped showing up for work after March 23, 2020, and did not return until April 22, 2020, when he left without performing any work. Stating his intent to sign up for unemployment, leaving the work site, and not returning to work for a month constitutes substantial evidence

to support the ULJ's finding that Hogan quit his employment on March 23, 2020. For these reasons we affirm the challenged factual finding.

Affirmed.