

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0426**

Michael Olson,
Relator,

vs.

Schneiderman's Furniture Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 13, 2021
Affirmed
Gaïtas, Judge**

Department of Employment and Economic Development
File No. 40661985-3

Howard L. Bolter, Bolter Law, LLC, Minneapolis, Minnesota (for relator)

Schneiderman's Furniture Inc., Meadowlands, Minnesota (respondent employer)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Gaïtas, Judge; and
Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Michael Olson challenges the decision of the unemployment law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer. We affirm.

FACTS

Olson was a full-time sales manager with Schneiderman's Furniture Inc. (Schneiderman's). Due to the COVID-19 pandemic, he began working from home in March 2020. His remote job responsibilities were to "maintain communication and updates for existing customers that had already purchased [furniture], to facilitate and . . . schedule garage-drop delivery when merchandise was received and landed, [and] to monitor and facilitate sales for e-commerce via a chat system." In early April 2020, Schneiderman's noted that Olson was not adequately completing his remote tasks and addressed these concerns with him. Olson responded that he had a good-faith basis for refusing to facilitate certain customer exchanges: he was concerned about compliance with statewide COVID-19 laws and his personal liability for potential violations.

Olson's concerns were further exacerbated by an "April Fools" themed email that a warehouse manager sent to office staff around the same time. The email showed multiple warehouse staff standing shoulder-to-shoulder without personal protective equipment. In an apparent reference to the governor's emergency executive order, which required Minnesotans to stay at home, the body of the email read, "Working from 'home base'

today. Unloaded 400 pieces of furniture with the crew. Does this count?” *See* Emerg. Exec. Order No. 20-20, *Directing Minnesotans to Stay at Home* (Mar. 25, 2020).

In mid-April 2020, a customer sought to return a couch and used the online chat function to request a pickup. Olson refused to assist the customer based on his belief that doing so would violate another executive order issued to address the pandemic. *See* Emerg. Exec. Order No. 20-33, *Extending Stay at Home Order and Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation* (Apr. 8, 2020). Ultimately, another employee facilitated the customer’s request.

Olson notified human resources (HR) of his concerns about the April Fools email and “other actions and comments by management.” HR and management assured Olson that, despite lapses in judgment by individual employees, the company was addressing issues as they arose and following statewide COVID-19 safety protocols.

Nonetheless, Olson stopped performing his job duties on April 17, 2020. On April 21 and 22, 2020, Olson notified the Minnesota Occupational Safety and Health Administration (MnOSHA), the Minnesota Bureau of Criminal Apprehension (BCA), and the State Critical Sectors hotline of his concerns. Then, he emailed the store manager stating that he would “not take part in current company practices” until representatives from MnOSHA, the BCA, and the Minnesota Department of Public Safety determined that Schneiderman’s was fully complying with the stay-at-home order.

Olson received an email response from MnOSHA confirming that some of the company’s activities were permissible under the order as “minimum basic operations.” But the Critical Sectors hotline responded that picking up furniture returns—an activity that

Schneiderman’s continued, and that Olson was asked to facilitate via the online chat system—was not allowed under the order.

In late April, the governor issued another executive order, which provided new guidance to businesses. *See* Emerg. Exec. Order No. 20-40, *Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces* (Apr. 24, 2020). Under that order, Schneiderman’s qualified as a non-critical exempt business and was permitted to resume certain in-person activities. The company planned to reopen stores to customers with appointments on May 1, 2020.

On April 27, 2020, Olson’s store manager emailed him. The email ordered him to resume his remote work by the end of the day or the company would presume that he had voluntarily resigned. Olson was also given the option of returning to in-person work on May 1, 2020, or taking a 30-day unpaid leave. Olson responded that he was not quitting, but that he “refused to facilitate and support illegal activities.” He did not return to his online work or report to the store on May 1, 2020.

Olson applied for and initially received unemployment benefits. But an administrative clerk at the Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility, concluding that Olson had quit his position for personal reasons and therefore was ineligible for unemployment benefits.

Olson appealed the determination and had an evidentiary hearing before a ULJ. The ULJ determined that Olson had quit his position and, in any event, “any error made by Schneiderman [sic] in following Covid-19 guidelines was not so adverse that it would

compel the average, reasonable worker to quit and become unemployed.” Thus, the ULJ concluded that Olson was ineligible to receive unemployment benefits. Olson requested reconsideration of the decision, and on reconsideration, the ULJ affirmed the previous determination of ineligibility.

Olson appeals.

DECISION

When reviewing the decision of the ULJ, this court may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of 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) (2020).

Olson argues that the ULJ erred in determining that he is ineligible for unemployment benefits because he quit his job without a good reason caused by his employer. We view “the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). But we apply de novo review “to the ULJ’s interpretation of the unemployment statutes and to the ultimate question whether an applicant is eligible to receive unemployment benefits.” *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

As an initial matter, Olson contends that he did not quit his position, but, instead, was discharged by his employer. Under Minnesota law, “[a] discharge from employment 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.” Minn. Stat. § 268.095, subd. 5(a) (2020). Conversely, an employee voluntarily quits when he exercises his free-will to leave or stop working. *Anson v. Fisher Amusement Corp.*, 93 N.W.2d 815, 819 (Minn. 1958). “Whether an employee has been discharged or voluntarily quit is a question of fact subject to our deference.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012).

The ULJ found that, “[while] there is evidence showing that Olson and his manager argued over whether he quit or was discharged or may be eligible for an unpaid leave after April 27, 2020, the evidence shows that Olson made the decision to end the employment at the time the employment ended on April 27, 2020,” and that this decision was a quit. The evidence substantially sustains the ULJ’s finding that Olson quit. Olson stopped working on April 17, 2020. His manager told him that a refusal to resume his remote work by April 27, 2020, would be deemed a voluntary resignation. And he never resumed working. We accordingly reject Olson’s argument that he was discharged.

Olson next argues that the ULJ erred in concluding that he quit without a good reason caused by his employer. He contends that his employer’s unsafe practices, which endangered employees and potentially subjected him to criminal liability under the governor’s orders, compelled him to quit his employment.

Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). An employee who voluntarily quits employment is ineligible for unemployment benefits unless “the applicant quit the employment because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1) (2020). 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)(1)-(3) (2020). “To compel” is “to cause or bring about by force, threats, or overwhelming pressure.” *Werner v. Med. Pros. LLC*, 782 N.W.2d 840, 843 (Minn. App. 2010) (quoting *Black’s Law Dictionary* 321 (9th ed. 2009)), *rev. denied* (Minn. Aug. 10, 2010).

The standard is an objective, reasonable-person standard, considering the conduct of an ordinarily prudent person. *Id.* It assumes that the worker is “average” and not “supersensitive.” *Nichols v. Reliant Eng’g & Mfg.*, 720 N.W.2d 590, 597 (Minn. App. 2006). And the circumstances causing an employee to quit with good cause must be “real, not imaginary, substantial not trifling, and reasonable, not whimsical;” the reason for the quit must be compelling and necessitous. *Ferguson v. Dep’t of Emp. Servs.*, 247 N.W.2d 895, 900 n.5 (Minn. 1976) (quotation omitted). The statutory analysis “must be applied to the specific facts of each case.” Minn. Stat. § 268.095, subd. 3(b) (2020).¹

¹ For the first time on appeal, Olson argues that we should depart from the statutory standard for determining whether an employee quit for a good reason caused by an

The reason why an individual quit employment is a fact question for the ULJ to determine. *See Beyer v. Heavy Duty Air, Inc.*, 393 N.W.2d 380, 382 (Minn. App. 1986) (reviewing determination of reason employee quit as a question of fact). Here, the ULJ determined that the “evidence show[ed] that Olson quit because he felt the employer was engaging in illegal activities and he could be held responsible for these violations.” We defer to this factual finding as we are required to do.

Notwithstanding Olson’s belief that Schneiderman’s was not complying with the governor’s orders, the ULJ’s factual findings—which are well founded on the record—do not establish that he was subjected to adverse conditions that would have compelled an average reasonable worker to quit. First, Olson was not adversely affected by the perceived

employer. *See* Minn. Stat. § 268.095, subd. 3(a) (2020). Olson notes that a March 16, 2020 executive order suspended “strict compliance” with Chapter 268. *See* Emerg. Exec. Order No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (March 16, 2020). He contends that the suspension of strict compliance requires us to apply a “liberal”—yet undefined—standard in determining whether he had a good reason to quit his job. Because Olson did not present this argument to the ULJ, it is forfeited. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)). But even if we were to consider the argument in the interests of justice, *see* Minn. R. Civ. App. P. 103.04 (“The appellate courts may . . . take any . . . action as the interest of justice may require.”), we would not apply a different standard here. As DEED points out, in addressing the exception to ineligibility for quitting because of a good reason caused by the employer, a subsequent executive order specifically incorporated the standard provided by section 268.095, subdivision 3(a). *See* Emerg. Exec. Order No. 20-54, *Protecting Workers from Unsafe Working Conditions and Retaliation During the COVID-19 Peacetime Emergency* (May 13, 2020) (stating “any worker who quits their employment because the employer has failed to correct an adverse work condition related to the pandemic which would compel an average, reasonable worker to quit . . . shall not lose unemployment insurance benefits eligibility under existing law and Executive Order 20-05”).

violations. Until he quit, Olson was working at home. His personal safety was not impacted. Although he was concerned that Schneiderman's would not have a COVID preparedness plan in place by the time he was required to report to work on May 1, 2020, he quit his job several days before that date. In any event, an HR representative testified at the hearing before the ULJ that she, the company owner, and the general manager of retail stores did "everything that we could think of to make it a safer environment." And the evidence showed that a preparedness plan was in place by the end of the day on May 1 or very shortly thereafter. Olson also expressed concern that his work would expose him to criminal liability. But Schneiderman's did not require him to do anything unlawful. After Olson learned that accepting furniture returns potentially violated the governor's initial order, he was not required to participate in any returns. Moreover, the ULJ found that Olson was never required to facilitate unlawful activity by ordering his employees to commit violations.

Second, Olson was not subjected to any conditions that would have compelled an average reasonable worker to quit. As noted, his personal safety was not in jeopardy and he was not exposed to criminal liability. And Schneiderman's was responsive to Olson's concerns about potential violations of the governor's order. For example, HR responded to Olson when he complained about the warehouse photo and assured him that management had addressed the situation. Olson was understandably concerned about the pandemic. But his reaction—refusing to work until "it is confirmed and documented by OSHA, the BCA, and the State of Minnesota DPS that we are not in violation of the Stay-At-Home order and [the] safety of our employees can be assured by a third party" and ultimately

quitting—was disproportionate. An average reasonable worker would not have been compelled to quit under the circumstances. We therefore conclude that Olson’s decision to quit was not based on a good reason caused by his employer.

Affirmed.