

*This opinion is nonprecedential except as provided by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
A21-0852**

Jeffrey T. Barlow,
Relator,

vs.

RMR Services, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 14, 2022
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 39099088-3

Jeffrey T. Barlow, Ogilvie, Minnesota (pro se relator)

RMR Services, LLC, Blaine, Minnesota (respondent employer)

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

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator challenges the decision of an unemployment law judge (ULJ) that he was ineligible for unemployment benefits because he quit his job and did not meet any statutory exception to ineligibility based on that quit. Relator argues that he had a good reason for quitting caused by his employer's failure to take appropriate precautions against the spread of COVID-19 and that it was medically necessary for him to quit. Because we agree with the ULJ that neither exception applies, we affirm.

FACTS

On March 6, 2020, the first case of COVID was confirmed in Minnesota; the governor declared a state of peacetime emergency on March 13, 2020.

March 6, 2020, was also the day on which relator Jeffrey Barlow, a gas meter relight technician employed by respondent RMS Services, gave his general manager the required two weeks' notice that he would be quitting on March 20, 2020. Because work had slowed down, respondent asked relator to make March 13, 2020, his last day, and relator agreed.

On March 15, 2020, relator established an unemployment-benefit account. In April 2020, he replied to a request for information by saying:

I quit because I knew the virus was coming, and I had influenza B in December and my heart was messed up, I got even sicker, took another week off, went back to work in [January], and I knew [I was] at risk so I thought it was best to not work, at the same time I turned in my notice, they were getting ready to close because of the virus.

In May 2020, relator received a determination of ineligibility for unemployment benefits. It stated that the evidence did not show that relator had an offer of better employment, he had been overpaid unemployment benefits of \$241, and that he could send an appeal by June 15, 2020. Relator sent an appeal, saying “I quit because [of] the type of work I did with so many people every day with the virus out everywhere.” In July 2020, he sent another appeal, saying, “I gave a two week notice to quit because[] the virus was affecting myself and all my customers with possible spreading of the virus.”

At the evidentiary hearing on relator’s appeal, the ULJ framed the issue as “whether [relator] quit for a good reason caused by his employer or any other exception to ineligibility [applied].” When relator was asked, “Prior to quitting, did you talk to your employer about your concerns regarding COVID-19?” he answered, “No.” Relator also testified that he told respondent he was quitting because of COVID-19 and his medical issues.

The ULJ stated that relator “quit his job for unknown reasons” and determined that neither the good-reason-caused-by-the-employer exception nor the medical-necessity exception applied.¹ After relator requested reconsideration, the ULJ affirmed the decision that he was ineligible for benefits and that neither exception applied. Relator challenges this decision, arguing that he quit because of a good reason caused by respondent and that it was medically necessary for him to quit.

¹ The ULJ also determined that relator’s testimony was less credible than the testimony of respondent’s representative. Because both parties agree that this determination was flawed, we do not address it, and it has no bearing on our decision.

DECISION

1. Good Reason Caused by the Employer

“Whether an employee had good cause to quit is a question of law, which we review de novo.” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012) (quotation omitted).

An applicant for unemployment benefits who “quit the employment because of a good reason caused by the employer” is not ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (2020).

(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.

....

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be a good reason caused by the employer for quitting.

Minn. Stat. § 268.095, subd. 3 (2020).

Relator does not meet these criteria for two reasons. First, it is undisputed that March 6, 2020, when relator told respondent he intended to quit his job in two weeks, was also the date that Minnesota’s first COVID case was confirmed; no emergency had then been declared, no restrictions had been imposed, and no measures against COVID had been

taken. Although relator states in his brief that the good reason for him to quit was respondent “requiring [relator] to continuously be exposed to Covid-19 and all its uncertainties,” respondent could not have been “continuously requiring [relator] to be exposed to Covid-19” prior to March 6, 2020, because COVID had not yet been detected in Minnesota.

Second, when relator was asked at the hearing if, prior to telling respondent he was quitting, he had ever talked to respondent about COVID, he answered, “No.” Consequently, relator did not “complain to the employer and give the employer a reasonable opportunity to correct the adverse working condition” as required by Minn. Stat. § 268.095, subd. 3(c) (2020), before an “adverse working condition . . . may be a good reason caused by the employer for quitting.” Moreover, relator’s statement in his brief that he asked his employer “what they were going to do to protect [him] from Covid-19 in [his] workplace” is contradicted by his statement at the hearing that he had not mentioned COVID to respondent before he quit.

Relator also argues that his phone records, which the ULJ did not allow into evidence because she found them to be illegible, “would have allowed for [her] to make a determination that the reason that I voluntarily quit was because I had a good reason to quit that was caused by my employer” The records in question were two pages listing relator’s phone activity from 8:57 a.m. on March 23 to 5:09 p.m. on March 27 and included the location and duration of the calls he made and received. Phone records of March 23 to 27 could not have been relevant to relator’s telling respondent he was quitting on March 6, working his last day on March 13, or establishing an unemployment benefit account on

March 15. If the ULJ's decision not to allow the phone records into evidence were erroneous, the error would have been harmless. See Minn. Stat. § 268.105, subd. 7(d) (2020) (providing that an error must affect substantial rights to support reversal); *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015) (holding that the erroneous exclusion of evidence is not grounds for a new trial when the error is harmless).

The good-reason-caused-by-the-employer exception to ineligibility for benefits does not apply to relator.

2. The Medical-Necessity Exception.

Whether an exception to ineligibility for quitting employment applies to an applicant is subject to de novo review. *Pippe v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000). An applicant for unemployment benefits who quit because a serious illness or injury made quitting medically necessary is not ineligible for unemployment benefits, but “[t]his exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” Minn. Stat. § 268.095, subd. 1 (2020).

Relator provided no evidence either that he requested any accommodation of his illness from respondent or that respondent failed to make any accommodation. He testified at the hearing that, after being hospitalized, “I stayed out as long as I could. . . . I wasn’t well when I went back to work [and] . . . just never got well. I’m still sick. I . . . still have problems and I just can’t get over them.” When asked, “Is there any other reason you quit your job?,” relator answered “No”; he did not mention any refusal or failure of respondent to accommodate his ailments. Therefore, this exception does not apply.

Because neither statutory exception to the rule that quitting employment results in ineligibility for unemployment benefits applies, we affirm.

Affirmed.