This opinion is nonprecedential except as provided by Minn.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
A23-1587

Jordan M. Kovarik,
Relator,

vs.

JP Hospitality Group, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 29, 2024
Affirmed
Schmidt, Judge

Department of Employment and Economic Development
File No. 49967008-2

Jordan Michael Kovarik, Henning, Minnesota (pro se relator)

JP Hospitality Group, LLC, Otter Trail, Minnesota (respondent employer)

Keri A. Phillips, Katrina Gulstad, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Schmidt, Presiding Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Relator seeks review of the decision of an unemployment-law judge (ULJ) that he was not eligible for unemployment benefits, arguing that (1) he had good reason to quit caused by respondent-employer, and (2) he quit unsuitable employment within 30 calendar days. We affirm.

FACTS

Relator Jordan M. Kovarik started working as a maintenance engineer at the Thumper Pond Resort on February 1, 2023. Kovarik's job duties included overseeing all building maintenance, supervising maintenance employees, reviewing safety checklists, assigning projects, and performing maintenance tasks. On May 26, 2023, respondent JP Hospitality Group (JP) purchased the resort and retained Kovarik as a full-time employee.

JP asked Kovarik to perform maintenance tasks such as painting the deck, remodeling all of the guest rooms, and completing electrical work. Kovarik responded that he did not have an electrical license and would not do the requested electrical work without a license. JP did not discipline Kovarik or continue to ask him to do electrical work. Kovarik expressed frustration about his increased workload to the assistant general manager. Kovarik officially quit his employment on June 27, 2023.

Kovarik applied for unemployment benefits. In its initial determination denying benefits, the Minnesota Department of Employment and Economic Development stated that Kovarik "quit due to employment change," noted that JP "was willing to work with [Kovarik] on changes," and concluded that "this would not cause an average worker to quit." Kovarik appealed, stating that he quit because JP demoted him, asked him to do work that he could not legally do, and did not give him staff to help with the work.

After a hearing, the ULJ determined that no exception qualified Kovarik for unemployment benefits because (1) JP did not cause Kovarik to have a good reason to quit, and (2) Kovarik did not quit within the statutory 30-day period because the work was unsuitable. Kovarik filed a request for reconsideration and the ULJ affirmed the decision.

This certiorari appeal follows.

DECISION

Appellate courts review a ULJ's factual findings in the light most favorable to the decision. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We generally defer to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008). When witness credibility significantly affects the outcome of the decision, the ULJ must give a reason for crediting one witness's testimony over another. Minn. Stat. § 268.105, subd. 1a(a) (2022).

We will affirm the ULJ's decision unless "the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision" are affected by, among other things, an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2022); *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012). We review de novo whether an employee had good reason to quit. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

A person applying for unemployment benefits "who quit employment is ineligible for all unemployment benefits" unless an enumerated exception applies. Minn. Stat. § 268.095, subd. 1 (2022). Kovarik contends that two exceptions apply: (1) "the applicant quit the employment because of a good reason caused by the employer," and (2) "the applicant quit the employment within 30 calendar days of beginning the employment and the employment was unsuitable." *Id.*, subd. 1(1), (3). We review each argument in turn.

I. The ULJ did not err in concluding that Kovarik was ineligible for unemployment benefits under the "good reason" exception.

Kovarik argues that the ULJ erred in concluding that Kovarik was ineligible for unemployment benefits under the "good reason" exception because JP changed his work responsibilities, held unreasonable expectations of work he could complete, and asked him to do electrical work without a license. For an applicant to receive unemployment benefits under the "good reason" exception, a preponderance of the evidence must demonstrate that the applicant's reason for quitting was (1) "directly related to the employment and for which the employer is responsible," (2) "adverse to the worker," and (3) "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. §§ 268.031, subd. 1, .095, subd. 3(a) (2022).

An action is adverse when it results in a loss of hours, a change in work schedule, or decreased pay. *See Rowan*, 812 N.W.2d at 884 (concluding that adverse action existed when employee lost work and hours); *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 419 (Minn. App. 2003) (decreasing wages and changing work schedule constitute adverse action). A change in responsibilities has been considered grounds that would compel an average, reasonable worker to quit when other factors such as loss of pay and change in work schedule were also present. *Rootes*, 669 N.W.2d at 419.

The ULJ determined that Kovarik's reasons for quitting satisfied the first requirement for the "good reason" exception, but that he could not satisfy the second—adverse to the worker—or third—compel an average worker to quit—requirements. The ULJ found that JP never disciplined Kovarik, did not decrease his pay or hours, and that

JP "did not expect Kovarik to perform the electrical work." The ULJ also found the assistant general manager's testimony to be detailed and plausible, and, therefore, credible.

The record contains substantial evidence to support the ULJ's determination that JP's actions were not adverse. The evidence, in the light most favorable to the ULJ's decision, demonstrates that no adverse actions took place because JP did not decrease Kovarik's hours or pay. The ULJ found that the assistant general manager's testimony as to Kovarik's pay and hours was credible and gave reasons for crediting the testimony. As such, we defer to the ULJ's credibility determination. *Peterson*, 753 N.W.2d at 774.

Even if Kovarik's responsibilities changed or decreased such that Kovarik perceived he was demoted, these changes are not adverse. Kovarik's job duties under previous management included building maintenance, supervising maintenance employees, and performing maintenance tasks. The maintenance tasks JP directed Kovarik to perform were within Kovarik's job duties. Further, Kovarik had the skills to perform all the maintenance tasks, other than the electrical work. JP did ask Kovarik to do electrical work without a license, but the ULJ found the assistant general manager's testimony credible in that JP did not force Kovarik to perform the electrical work or continue to ask him to do the work after Kovarik informed JP that he did not have a license and would not perform the work without a license. We must defer to that credibility determination. *Id.*

Kovarik's arguments are similar to another case in which the employer moved the employee from the position of site administrator to a mentor-assistance service coordinator position, which the employee viewed as a demotion. *See Williams v. Right Step Acad.*, 607 N.W.2d 482, 484 (Minn. App. 2000). The employee quit her job, reasoning that she did not have the appropriate skills for the new position. *Id.* The ULJ's determination was supported by substantial evidence that the employee could not satisfy the "good reason" exception because the position change would not result in a substantial decrease in salary and the responsibilities would not be less important. *Id.* at 485. As such, we affirmed the ULJ's conclusion that the employee was ineligible for unemployment benefits. *Id.* at 486.

Similarly, Kovarik does not allege, and the facts do not support, that he experienced a substantial decrease in pay or that he could not perform the responsibilities assigned by the new owners. Although Kovarik perceived the new work assignments from JP to be a demotion, as in *Williams*, this alone is not enough to create an adverse action that satisfies the "good reason" exception. Therefore, the ULJ did not err in concluding that Kovarik was ineligible for unemployment benefits under the "good reason" exception.

II. The ULJ did not err in concluding that Kovarik was ineligible for unemployment benefits under the "30-day" exception.

Kovarik argues that the ULJ erred when it determined that Kovarik was ineligible for unemployment benefits under the "30-day" exception because he quit within 30 calendar days and the employment was unsuitable. For an applicant to receive unemployment benefits under the "30-day" exception, the applicant must have quit employment within 30 calendar days and the employment must have been unsuitable. Minn. Stat. § 268.095, subd. 1(3). "Suitable employment" is defined as "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." Minn. Stat. § 268.035, subd. 23a(a) (2022). Considerations for this determination include training and experience. *Id.*, subd. 23a(b) (2022).

At the outset, Kovarik began working for JP on May 26, 2023, and left his employment on June 27, 2023. Since this is more than 30 calendar days, the exception cannot apply. *See* Minn. Stat. § 268.095, subd. 1(3).

In addition, substantial evidence supports the ULJ's determination that the employment was suitable for Kovarik because "[h]e had the skills to perform his job duties, he had performed similar work in the past, and it appears to be in his labor market." The record shows that Kovarik's position remained the same when JP purchased the resort, and his job duties continued to include maintenance work and repairs. Although JP initially asked Kovarik to do electrical work, JP's assistant general manager testified at the hearing before the ULJ that JP agreed to obtain a contractor when Kovarik said he could not perform the electrical work, and the ULJ determined that the assistant general manager's testimony was more credible on this point. Because we defer to the ULJ's determinations on witness credibility and substantial evidence in the record supports the ULJ's determination, the ULJ did not err in concluding that the "30-day" exception did not apply.

Affirmed.