Court of Appeals of Minnesota.
Dwight G. KRENZ, Relator,
v.
CLOVERLEAF COLD STORAGE, Respondent,
Department of Employment and Economic Development, Respondent.

No. A04-2405.
Sept. 20, 2005.

Department of Employment and Economic Development, File No. 11117 04.
Marisela E. Cantu, Charles H. Thomas, Law Offices of Southern Minnesota Regional Legal Services, Inc., Mankato, MN, for relator.

Cloverleaf Cold Storage, Fairmont Refrigerated Service Co. (Corp.), Fairmont, MN, respondent.

Linda A. Holmes, Department of Employment and Economic Development, St. Paul, MN, for respondent.

Considered and decided by TOUSSAINT, Chief Judge; WILLIS, Judge; and FORSBERG, Judge.[FN*]

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

UNPUBLISHED OPINION

WILLIS, Judge.

***1** By writ of certiorari, relator challenges the senior unemployment-review judge's decision that relator quit work without good reason caused by his employer. Because the facts show that the employer violated federal transportation-safety laws, giving relator good cause per se to quit, we reverse.

FACTS

Relator Dwight G. Krenz was employed by Cloverleaf Cold Storage (Cloverleaf) from December 1997 to June 17, 2004, and was a truck driver for Cloverleaf when he quit his employment. On June 17, 2004, Krenz, who lived in Fairmont, finished a shift at about 11:30 a.m. He then went to Armstrong, Iowa, to work on his personal vehicle. While Krenz was in Armstrong, he received a telephone call at about 4:30 p.m. on June 17 from a Cloverleaf dispatcher, instructing him to pick up a load in Sioux City, Iowa, and deliver it to Saint Paul by 5:30 a.m. on June 18. Krenz told the dispatcher that he could not make the delivery within the time scheduled because he was too tired. The dispatcher told Krenz to quit yelling at her and that he had to deliver the load, and she then hung up the telephone. That evening, Krenz reported to Cloverleaf's Fairmont office at approximately 6 p.m. He told the secretary that he was quitting, and he returned his equipment.

Krenz testified that he had complained several times in the past to Cloverleaf's transportation manager when dispatchers asked him to work excessive hours, which is a violation of federal transportation-safety laws. He also

testified that the transportation manager had fired several dispatchers for not complying with the law.

After Krenz quit, he applied for unemployment benefits. His application indicates that he quit because his employer was "not following federal law" by not allowing him the required hours between shifts and by requiring him to work excessive hours. A Minnesota Department of Employment and Economic Development (DEED) adjudicator determined that Krenz was disqualified from receiving unemployment benefits because he did not give the employer an opportunity to correct the problem before he quit.

Krenz appealed the decision, and a telephone hearing was held before an unemployment-law judge (ULJ). Krenz was the only witness. The only evidence from Cloverleaf was a form captioned "Report to Raise an Issue," which Cloverleaf submitted to DEED to oppose Krenz's request for unemployment benefits. The ULJ affirmed the adjudicator's determination.

Krenz again appealed, and a senior unemployment-review judge (SURJ) also determined that Krenz quit his employment with Cloverleaf and that no exception to disqualification applied. The SURJ based her decision on the fact that Krenz failed to discuss his complaint with the transportation manager and failed to provide his employer with a reasonable opportunity to respond to his complaint. This certiorari appeal followed.

DECISION

On appeal, this court reviews the decision of the SURJ and accords it "particular deference." FN1 *Tuff v. Knitcraft Corp .*, 526 N.W.2d 50, 51 (Minn.1995). The SURJ's factual findings will not be disturbed "as long as there is evidence that reasonably tends to sustain those findings." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn.2002). But this court exercises independent judgment with respect to questions of law. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn.1989).

FN1. The legislature recently substituted the term "senior unemployment review judge" for "representative of the commissioner ." *See* 2004 Minn. Laws ch. 183, § 71.

***2** An employee who quits his or her employment without good reason caused by the employer is disqualified from receiving unemployment benefits. Minn.Stat. § 268.095, subd. 1(1) (Supp.2003).FN2 The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but this conclusion must be based on findings that have reasonable evidentiary support. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn.1978) (interpreting predecessor statute, requiring "good cause" attributable to employer). A determination regarding an applicant's entitlement to unemployment benefits must be based on the available information "without regard to any common law burden of proof." FN3 Minn.Stat. § 268.069, subd. 2 (2004); *see also* Minn.Stat. § 268.101, subd. 2(d) (2004) (providing that disqualification "be determined based upon that information required of an applicant, any information that may be obtained from an applicant or employer, and information from any other source, without regard to any common law burden of proof").

FN2. The revisor's office inadvertently substituted the term "ineligible for" for the term "disqualified from" in Minn.Stat. § 268.095, subds. 1, 4, 7, 8(a) (Supp.2003). *See* Minn.Stat. § 268.095, subds. 1, 4, 7, 8(a) (2002) (using term "disqualified from"); 2003 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 11 (making other changes to Minn.Stat. § 268.095, subd. 1, but retaining term "disqualified from"); 2003 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 20(j), (k) (directing revisor to change the term "disqualified from" to "ineligible for" only in Minn.Stat. § 268.095, subd. 12, and then to renumber to Minn.Stat. § 268.085, subd. 13b).

FN3. Formerly, employees had the burden of proving good cause to quit. *See Parnell v. River Bend*

Carriers, Inc., 484 N.W.2d 442, 444 (Minn.App.1992).

It is undisputed that the dispatcher's assignment to Krenz on June 17, 2004, violated a federal transportation-safety law. *See* 49 C.F.R. § 395.3(a) (2004) [FN4] (noting that drivers' shifts should follow ten consecutive hours off duty). And the SURJ noted the illegality of the dispatcher's request. An employer's violation of federal transportation-safety laws provides a truck driver with "good cause per se to quit at any time as a result of the violation ." *Parnell v. River Bend Carriers, Inc.*, 484 N.W.2d 442, 445 (Minn.App.1992). In *Parnell,* the relator's employer required him to drive more hours than were permitted by federal law and to submit inaccurate driver logs, another violation of federal law. *Id.* at 443, 445. This court determined that Parnell had good cause to quit his job even though he did not complain to his employer. *Id.* at 445. The SURJ here did not address whether Krenz had good cause per se to quit.

FN4. On July 16, 2004, after Krenz quit his job, the D.C. Circuit Court of Appeals vacated the federal rule limiting the hours of driving and work of commercial motor-vehicle operators. *Public Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1223 (D.C.Cir.2004). But the rule is to remain in effect until September 30, 2005, if it is not replaced before that time. 70 Fed.Reg. 3339 (Jan. 24, 2005).

The evidence before the SURJ showed that Cloverleaf was aware that its dispatchers had previously made assignments in violation of federal transportation-safety laws. And while several dispatchers had been fired for making these assignments, Krenz's uncontested testimony indicated that such assignments were commonplace. DEED argues that the dispatcher's instruction did not give Krenz a reason to quit caused by the employer because the dispatcher was a co-employee without managerial authority, and Cloverleaf was therefore not responsible for the violations of federal transportation-safety laws.

The federal rules for transportation safety effective during Krenz's employment prohibited a motor carrier from requiring or permitting "a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired … through fatigue … as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle." 49 C.F.R. § 392.3 (2004). The rules also prohibited a motor carrier from permitting or requiring "any driver used by it to drive a property-carrying commercial motor vehicle … (1) More than 11 cumulative hours following 10 consecutive hours off duty; or (2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty." 49 C.F.R. § 395.3(a). Because as a motor carrier, Cloverleaf is legally responsible for ensuring that its drivers comply with federal safety laws, we conclude that it is also responsible for assignments made by its dispatchers.

***3** Therefore, the evidence before the SURJ showed that Cloverleaf violated federal transportation-safety laws when its dispatcher told Krenz to drive a shift without allowing him the ten preceding consecutive hours off duty. Because Cloverleaf violated federal transportation-safety laws, we conclude that Krenz had good cause per se to quit, that he was not required to report his complaint to his employer and give it yet another opportunity to respond to his complaint, and that he was not disqualified from receiving unemployment benefits.

Reversed.

Minn.App.,2005.
Krenz v. Cloverleaf Cold Storage
Not Reported in N.W.2d, 2005 WL 2277285 (Minn.App.)

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