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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1122**

Beth Gillman,  
Relator,

vs.

Listening House of St. Paul Inc.,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed May 4, 2010  
Affirmed  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 21897672-3

Peter B. Knapp, William Mitchell Law Clinic, St. Paul, Minnesota (for relator)

Ruth Y. Ostrom, Minneapolis, Minnesota (for respondent employer)

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Development, St. Paul, Minnesota (for respondent DEED)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Relator challenges the decision of the unemployment law judge that she was  
ineligible for unemployment benefits because she quit without good reason caused by her

employer. Relator argues that (1) she is eligible for benefits under Minn. Stat. § 268.095, subd. 1(6) (2008), because she quit work within 30 days of effectively being laid off and (2) even if alternate employment was available in some capacity, it was not suitable because she was offered a position that would have been a demotion. We affirm.

## **FACTS**

Relator Beth Gillman was employed at respondent Listening House as a senior staff member. In August 2008, relator was informed that her position at Listening House was being eliminated because a new program-director position was being created that would absorb the duties of the senior staff member. Although Listening House had not set a date for hiring the new program director, relator was told that it would take place by the end of the year. Listening House encouraged relator to apply for the new position and also offered relator a different position as a purchasing agent. The purchasing agent position had fewer responsibilities but had equivalent pay and similar hours.

Relator decided not to apply for the program-director position and declined the purchasing-agent position, believing it was a demotion. Without asking how long she could stay in her current position, or inquiring as to when she would be laid off, relator gave her 30-day notice on October 1, 2008. Relator's last day of work at Listening House was October 31, 2008, and Listening House hired a new program director on November 10, 2008.

Relator established a benefit account with respondent Department of Employment and Economic Development (DEED), and a DEED adjudicator initially determined that relator was eligible for benefits because she quit for good reason caused by her employer.

Listening House appealed the determination, and, following a de novo hearing, the unemployment law judge (ULJ) reversed the initial determination of eligibility. The ULJ determined that relator was ineligible for benefits because she quit her employment without good reason caused by her employer. Relator filed a request for reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

### **D E C I S I O N**

When reviewing the decision of a ULJ, this court may remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008).

Employees who quit employment are ineligible for unemployment benefits, except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (2008). An exception applies if

the applicant quit because the employer notified the applicant that the applicant was going to be laid off because of lack of work within 30 calendar days. An applicant who quit employment within 30 calendar days of a notified date of layoff because of lack of work is ineligible for unemployment benefits through the end of the week that includes the scheduled date of layoff.

*Id.*, subd. 1(6).

Relator argues that she is entitled to unemployment benefits because she quit within 30 calendar days of “effectively” being laid off from her employment. To support her claim, relator contends that she quit on October 31, 2008, and the new program director was hired on November 10, 2008. Relator contends that because the new

program director would absorb the duties of her senior staff position, her position terminated at the time the new program director was hired. Thus, relator argues that because she quit within 30 days of her position being terminated, she qualifies for benefits under Minn. Stat. § 268.095, subd. 1(6).

We disagree. The applicable statute states that an applicant is eligible for benefits only if “the applicant quit because the employer notified the applicant that the applicant was going to be laid off because of lack of work within 30 calendar days.” Minn. Stat. § 268.095, subd. 1(6). Here, relator was notified that her position would be terminated, but she was not told the exact date it would terminate. Instead, relator was informed that “they were planning to have someone in the new position by the first of the year.” The statute unambiguously requires that the applicant quit in reaction to a notified date of layoff in order to be eligible for benefits. *See* Minn. Stat. § 268.095, subd. 1(6).

Although Listening House hired a new program director within 30 days of relator ending her employment, relator did not quit as a result of a notified date of layoff. Moreover, there is nothing in the record supporting relator’s claim that her position would terminate on the date the new program director was hired. Accordingly, relator does not fit within the exception provided in Minn. Stat. § 268.095, subd. 1(6).

Relator also argues that she quit for good reason caused by her employer because even if an alternative position was available, it was not suitable because it did not meet her specific needs and was arguably a demotion though the pay and hours were similar to her senior-staff-member position. An applicant is eligible for benefits if she quit “because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1).

A “good reason” 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). “Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(e).

Here, relator quit because she was informed that her position would be terminated at some point in the future and that, as a result, she would be laid off. Notification of discharge in the future is not a good reason to quit under Minn. Stat. § 268.095, subd. 3(e). Although the parties discuss at length relator’s other potential employment opportunities at Listening House, these opportunities constitute completely different employment positions. Relator was going to be laid off because her position was going to be terminated; and the fact that she was offered a different position is irrelevant under Minn. Stat. § 268.095, subd. 3(e). Therefore, the ULJ did not err in concluding that relator was ineligible to receive benefits.

**Affirmed.**