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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0076**

Vicki F. Zaudtke,
Relator,

vs.

Vision Financial & Home Mortgage Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 16, 2008
Affirmed
Minge, Judge**

Department of Employment and Economic Development
File No. 13025 07

Vicki F. Zaudtke, 4251 Southeast 26th Court, Gresham, OR 97080 (pro se relator)

Vision Financial & Home Mortgage Inc., 5700 Green Circle Drive, Minnetonka, MN
55343-9018 (respondent)

Lee B. Nelson, Katrina I. Gulstad, First National Bank Building, Suite E200, 332
Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

MINGE, Judge

Relator challenges the unemployment law judge's determinations that she quit her job without good reason caused by her employer and that she did not have good cause for missing her evidentiary hearing. We affirm.

FACTS

Realtor Vikki Zaudtke (Zaudtke) was employed by Vision Financial & Home Mortgage Inc. (Vision Financial) from April 1, 2006 to June 1, 2007. In her original application for unemployment benefits, Zaudtke stated that she quit because, during the last two months of her employment, her payroll checks were being returned for non-sufficient funds. Based on this information, the Minnesota Department of Employment and Economic Development (DEED) determined that Zaudtke was qualified to receive benefits under the "good reason caused by the employer" exception to Minn. Stat. § 268.095 (2006).

Vision Financial appealed the DEED determination. A telephone hearing was scheduled for September 26, 2007 at 8:15 a.m. It appears that the parties received notice of the hearing and instructions on how to participate by telephone. Zaudtke did not call in to participate in the hearing, and the Unemployment Law Judge (ULJ) was unable to reach Zaudtke using the telephone number Zaudtke provided. The hearing was held without Zaudtke, and witnesses presented testimony on behalf of Vision Financial.

Ultimately, the ULJ found that on one occasion in April of 2007, Vision Financial gave advance notice to all employees that all paychecks would be returned for non-

sufficient funds. Vision Financial paid all money owed employees on the following day. The ULJ found that all subsequent paychecks were timely paid.

Vision Financial presented testimony that Zaudtke never indicated to Vision Financial that she was concerned or dissatisfied with the way that she was paid. In addition, Vision Financial testified that Zaudtke had financial problems of her own, was borrowing money from coworkers, and had taken out multiple private “payday loans.” According to Vision Financial, Zaudtke left work unexpectedly to care for her sick mother in May 2007. Although Vision Financial initially held Zaudtke’s job open, Vision Financial considered her to have quit when Zaudtke’s daughter called to inform Vision Financial that Zaudtke wanted to move to Las Vegas. Based on this record, the ULJ found that Zaudtke did not qualify for unemployment benefits.

Zaudtke requested reconsideration of the ULJ decision. On reconsideration, the ULJ determined that she did not demonstrate “good cause” for missing the hearing and affirmed the initial decision. Specifically, the ULJ found that Zaudtke did not provide credible evidence that (1) the vehicle in which she was riding broke down; (2) she was stranded on the side of a road at the time of the hearing; and (3) “she made a reasonable effort to attend the hearing and be accessible by cell phone and [have] cell phone service available or landline telephone available for the time scheduled.” This certiorari appeal follows.

D E C I S I O N

Realtor raises two issues on appeal: (1) whether the ULJ properly determined that Zaudtke was ineligible for unemployment benefits because she quit without good reason

caused by the employer; and (2) whether the ULJ abused her discretion in refusing to grant Zaudtke another hearing.

I.

The court of appeals reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). The ULJ's factual findings are viewed in the light most favorable to the decision. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). Facts not submitted to the ULJ are not part of the record before us. *See* Minn. Stat. § 268.105, subds. 1(c) (requiring ULJ to render decision "upon the evidence obtained" at the evidentiary hearing), 7(d)(5) (allowing the court of appeals to reverse a ULJ decision if it is "unsupported by substantial evidence in view of the entire record as submitted") (Supp. 2007).

An applicant who quits employment is eligible to receive unemployment benefits if the applicant quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007). 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." Minn. Stat. § 268.095, subd. 3(a) (Supp. 2007). Whether an employee had good cause to quit is a question of law which the court of appeals reviews de novo. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

The ULJ found that only one check issued by Vision Financial was returned for non-sufficient funds, that Zaudtke was given advance notice of the problem, and that Vision Financial paid Zaudtke the owed amount the next day. This short delay in payment is not of such a nature that an average and reasonable person would become unemployed. While Zaudtke in her brief submits several additional reasons why she quit, including the claim that multiple payroll checks were returned for non-sufficient funds, this information was not presented to the ULJ, is not part of the record on review, and is not properly before this court.

The ULJ's findings of facts are supported by the record and the ULJ's legal conclusion that Zaudtke voluntarily quit without good cause was not erroneous.

II.

A ULJ must set aside an original decision and hold an additional evidentiary hearing when an applicant for unemployment benefits has good cause for failing to participate in the original hearing and requests reconsideration. Minn. Stat. § 268.105, subd. 2(d) (Supp. 2007). "Good cause" is defined as "a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing." *Id.* This court reviews the ULJ's decision declining a request for an additional hearing for an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

In considering the request for the new hearing, the ULJ found that Zaudtke did not make reasonable efforts to be accessible by telephone nor did she adequately substantiate her contention that she was stranded on the side of the road in a remote, rural area. The

ULJ determined that a reasonable person acting with due diligence would not have taken a recreational trip to a remote area on the morning of an 8:15 a.m. hearing. The ULJ observed that in this situation a reasonable person acting with due diligence would have made the effort to ensure that she was within cell phone range while on the trip. Based on the record before us, we conclude that the ULJ's denial of the request for an additional hearing was not an abuse of discretion.

Affirmed.

Dated: