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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0511**

Claire A. Anderson,  
Relator,

vs.

Nash-Finch Company,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed November 26, 2012  
Affirmed  
Connolly, Judge**

Department of Employment and Economic Development  
File No. 28598630-3

Claire A. Anderson, Hastings, Minnesota (pro se relator)

David M. Wilk, Larson King, LLP, St. Paul, Minnesota (for respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,  
St. Paul, Minnesota (for respondent department)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and  
Hooten, Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because she quit her employment without good reason caused by her employer. Because the ULJ's conclusion that relator quit her job without good reason attributable to her employer is based on findings that have the requisite evidentiary support, we affirm.

### FACTS

Relator Claire Anderson worked for respondent Nash-Finch Company (the employer) as a part-time cashier at an Econofoods grocery store from May 2011 to September 2011. A security camera recorded the cashiers' transactions. The store's director, J.H., watched a videotape of a transaction in which another employee, P.A., approached Anderson's cash register and spoke to her. Anderson then lifted a six-pack of hard lemonade high enough over the bar code scanner so that the bar code did not register. The cash-register record of the transaction did not include the six-pack.

J.H. watched the videotape after another employee, C.W., informed him that Anderson had mentioned a transaction that made her uncomfortable. J.H. notified a member of the loss-prevention department, J.B., who investigated the incident along with C.Z., the assistant store manager. In the course of their investigation, they interviewed Anderson. J.B. and C.Z. both testified that Anderson quit her job during the interview and that the interview was not taped or recorded; Anderson testified that they discharged

her during the interview and that she was asked to sign and signed a statement saying she knew the interview was being recorded.<sup>1</sup>

Anderson applied for unemployment benefits and was found to be eligible because “[t]he employer discharged [her] . . . because of theft or the suspicion of theft” and “[t]he evidence [did] not show that [she] was responsible for the theft or giving away of money, property, or services.” The employer appealed, and, after a telephone hearing, the ULJ found that Anderson was ineligible because she had quit her job without a good reason caused by the employer and that she had been overpaid \$760. In response to Anderson’s request for reconsideration, the ULJ affirmed this decision.

Anderson brings this certiorari appeal, arguing that she was discharged and, in the alternative, that, if she quit, she had a good reason caused by the employer; she also argues that the ULJ erred in not scheduling a second evidentiary hearing after Anderson requested reconsideration.

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<sup>1</sup> The parties also presented conflicting testimony as to the transaction. J.B. told the ULJ that Anderson first said that P.A. had pulled the six-pack “around the register on the customer’s side” and then, when he told her the video showed her lifting the six-pack over the scanner on the cashier’s side, Anderson “didn’t remember it at first but . . . finally remembered the scanner.” Anderson told the ULJ that P.A. said she couldn’t afford the six-pack and asked Anderson to put it aside, that Anderson put it aside, that P.A. then ran out of the store with it, and that the videotape would “not necessarily” show that Anderson put the six-pack in a place separate from the other items P.A. purchased. The ULJ found that Anderson “did not scan the [six-pack] and put it with the rest of the merchandise that had been scanned. [P.A.] took the [six-pack] out of the store without purchasing it and with [Anderson’s] knowledge.” Thus, the ULJ accepted J.B.’s version of the transaction and rejected Anderson’s. “When witness credibility and conflicting evidence are at issue, we defer to the decision-maker’s ability to weigh the evidence and make those determinations.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Therefore, we accept the ULJ’s finding.

## DECISION

### 1. Quit

“The determination that an employee quit without good reason attributable to the employer is a legal conclusion, but the conclusion must be based on findings that have the requisite evidentiary support.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). “When witness credibility and conflicting evidence are at issue, we defer to the decision-maker’s ability to weigh the evidence and make those determinations.” *Id.*

“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2010). “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2010).

The employer claims Anderson quit, and Anderson claims the employer discharged her, during the interview held as part of the investigation of P.A.’s theft of the six-pack. The ULJ questioned J.B. about the end of the interview.

Q. . . . [A]nd then what happened[?]

A. And then [Anderson] got up and left the room . . . .  
[She] said I quit and then walked out into the break room . . . .  
[T]hen we walked out into the front of the store and I asked  
her to . . . leave . . . .

. . . .

Q. . . . [A]nd then she said I quit before she left the  
office[?]

A. Yes.

. . . .

Q. . . . [W]hat else do you think is important to add or explain[?]

A. Just that she quit, she wasn't terminated.

J.B. answered "No" when asked if, at any time during the meeting, J.B. told Anderson she was being discharged and if J.B. had the authority to discharge employees.

The ULJ also questioned C.Z.

Q. Do you . . . agree with [J.B.'s testimony] or do you think there's something inaccurate or missing from his statement[?]

A. I agree with what [J.B.] said . . . . [A]t the end of the interview, after [he] asked [Anderson] to write a statement, [she] got very agitated, she stood up, . . . and said, something to the effect [of] I'm just done working for this place and she stormed out the door.

. . . .

Q. Well, did [J.B.] say anything to her . . . that you would think indicated she was terminated[?]

A. No, all he did was ask her to write out a written statement and that's when she just decided she was done working for this place and . . . stormed out of the office.

C.Z. answered "No" when asked if she told Anderson the interview was being recorded or that the videotape of the transaction would be given to the police.

Finally, the ULJ also questioned Anderson about the interview.

Q. And what are you saying occurred in this interview with [J.B.?]

A. [J.B. and C.Z.] falsely accused me of helping [P.A.] take the [six-pack].

Q. Who said what[?] . . . [W]hat did [J.B.] say[?]

A. [J.B.] said that I helped [P.A.] and I said no I did not and he called me a liar twice, and [C.Z.] . . . called me a liar too and they told me they were gonna turn the film into the . . . police and in the handbook it says, if you're accused of stealing you're fired. So I assumed I was fired and left.

Q. Did they say the interview was over[?]

A. I really felt like the[y] ambushed me and I got upset and left.

Q. Well was the interview over[?]

A. It wasn't really an interview, I was being accused of taking something I didn't take.

Q. Did they say we're done, you can go or anything to that effect to indicate they had decided to end the meeting[?]

A. No.

....

Q. . . . [C.Z.] said, you said something . . . to the effect of you were just done working [t]here. Do you recall if you said something to that [e]ffect[?]

A. No I did not say that.

In response to questions from her attorney, Anderson testified that J.B. and C.Z. "had me sign a statement that I was being recorded, and so I signed it" and "told me they were gonna turn the video into the . . . police." Anderson was also questioned by respondent's attorney.

Q. . . . [W]ho advised you that you were fired, who told you that[?]

A. [J.B.] and [C.Z.]

Q. And what did they say[?]

A. They accused me of helping [P.A.] take the [six-pack].

Q. What did they say[?] . . . [Y]ou're fired[,] you're terminated[?] . . . [W]hat words did they use to tell you you were fired[?]

A. That they were gonna turn the film into the Red Wing police.

....

Q. Isn't it true. . . that neither [J.B.] nor [C.Z.] told you you were fired[?]

A. I assumed I was.

The ULJ then asked, "Well the answer is yes or no. Would it be true that neither of them told you you are fired[?]" Relator answered, "No, they did not use that word."

Based on this testimony, the ULJ found that:

[J.B.] said [relator] said she quit. [C.Z.] said she did not hear [relator] use the word quit, but heard her say something like, “I’m just done working for this place” . . . . [C.Z.] said it was clear that [relator] was not going to work for them any longer. [C.Z.] said there was no threat to go to the police and the interview was not recorded. . . . [N]either [J.B.] nor [C.Z.] had authority to fire anyone. The [ULJ] finds . . . [J.B.’s] and [C.Z.’s] testimony to be more credible than [relator’s] testimony, because it was less self-serving and a more plausible chain of events. The evidence supports that [relator] is the one that made the decision to end the employment at the time it ended. [See Minn. Stat. § 268.095, subd. 2(a) (defining quit).] The evidence does not support that an average reasonable employee would have believed they were fired. The evidence does not show that the employer made a statement or action that would lead a reasonable employee to believe that they were no longer allowed to work for the employer in any capacity. [See Minn. Stat. § 268.095, subd. 5(a) (defining discharge).] The [ULJ] determines that [relator] quit.

Particularly in light of the deference owed to the ULJ’s ability to weigh the credibility of conflicting testimony, *see Nichols*, 720 N.W.2d at 594, the ULJ’s findings have the requisite evidentiary support.

## **2. Good Reason Caused by the Employer**

Relator argues in the alternative that, if she quit her employment, she had a good reason caused by the employer. “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.” Minn. Stat. § 268.095, subd. 3(a) (2010). The ULJ concluded that:

The employer had a right to investigate the transaction regarding [the six-pack] and both [P.A.’s] and [relator’s]

role[s] in the incident. The evidence does not show that [J.B.] and [C.Z.] treated [relator] in an unreasonable or illegal manner, such that she had to quit her job during the interview. The [ULJ] determines that [relator] quit without a good reason caused by [the employer].

The testimony quoted above supports the ULJ's findings. Anderson was not investigated until J.B. had viewed the video that showed Anderson lifting the six-pack over the scanner so it would not scan and the transaction record that showed the six-pack had not been charged or paid for. Anderson was given the opportunity to present her side of the story for consideration by those who would determine the consequences of the incident, but declined that opportunity. In response to her question, she was explicitly told that she was not being accused of stealing. While Anderson testified that she was threatened with police involvement, both the other people present at the interview said no such threat was made. Credibility determinations are the province of the ULJ, and this court defers to them. *See Nichols*, 720 N.W.2d at 594. The ULJ's decision that Anderson did not have a good reason caused by her employer for quitting is substantially supported by the evidence.

### **3. Request for an Additional Evidentiary Hearing**

“A reviewing court accords deference to a ULJ's decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

The [ULJ] must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or

(2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c) (2010). Anderson sought reconsideration on the ground that additional evidence could be available if the ULJ would subpoena documents and media, including a tape or film of Anderson's interview. But the ULJ had already heard from J.B. and C.Z. that no tape or recording was made of the interview and that such interviews were never taped or recorded.

The ULJ found that she

ha[d] no reason to subpoena for a nonexistent tape. There is no subpoena request for a tape of the actual incident that led to the investigation. The underlying incident regarding [the six-pack] was a reasonable and sufficient basis for the employer to investigate and interview [relator]. [Relator] wants any documents by [J.B., C.Z., or J.H.] (store director). However, all three were present at the hearing to testify about the events, and were subject to cross-examination. There is already sufficient evidence. It would be of little or no probative value. It appears that [relator's] attorney is fishing to see if he can find some sort of inconsistency. [Relator's] attorney also sought to subpoena all files and documents on another employee, [P.A.], whose separation is not before the [ULJ]. Again, there is already sufficient evidence as regards [relator]. . . . [Relator's] attorney also requests [relator's] performance reviews. These would not be relevant to the separation issue. There is sufficient evidence in the record of probative value to make a decision. [Relator] has not shown that there is evidence not submitted at the hearing that would likely change the outcome of the decision or that evidence that was submitted at the hearing was likely false. The [ULJ] does not find a basis to grant [an] additional hearing and affirms the decision.

The ULJ did not abuse her discretion in refusing to subpoena from the employer documents that were irrelevant to the separation issue or a tape that two of the employer's representatives had testified did not exist.

**Affirmed.**