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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0743**

Carol A. Peterson,
Relator,

vs.

Rolf Flaig Insurance Agency,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 13, 2008
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 17116 06

Carol A. Peterson, 826 8th Avenue, Two Harbors, MN 55616 (pro se relator)

Rolf Flaig Insurance Agency, 1223 East Superior Street, Duluth, MN 55802 (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101

Considered and decided by Klaphake, 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UNPUBLISHED OPINION

CRIPPEN, Judge

Relator challenges the unemployment law judge's decision that she quit her employment and is disqualified from receiving unemployment benefits. She also appeals the decision of the ULJ not to subpoena a requested witness. We affirm.

FACTS

Relator Carol Peterson began working for the Rolf Flaig Insurance Agency on July 1, 2003. The owner, Rolf Flaig, allowed relator to take a leave of absence in order to manage the estate of her recently deceased mother. Relator's leave began on September 15, 2006, and she planned to return to work on October 16, 2006. On October 9, 2006, relator called and asked Flaig if she could extend her leave because she needed more time to settle her mother's estate. She called to confirm this extra time a few days later and inquired about the possibility of returning to work on a part-time basis.

On November 2, 2006, relator and Flaig talked again. According to Flaig, he told relator that she could return to work full time, but he could not offer her part-time work. Flaig testified that relator thanked him and asked to use him as a reference in a future job search. Relator's testimony differed in that she stated she wanted to return to work on a full-time basis, but Flaig told her that he had neither a part-time nor a full-time position available.

Relator subsequently applied for unemployment benefits, claiming entitlement under Minn. Stat. § 268.069, subd. 1 (2006). Her request was denied when the Department of Employment and Economic Development initially determined that she had

quit her job without good cause. Relator sought review of this determination; the ULJ concurred with the initial decision of the department. The ULJ affirmed this decision after reconsideration.

DECISION

1. Findings

This court may overturn or modify a ULJ's decision if

the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006).

We will uphold a ULJ's findings of fact if they are supported by substantial evidence, viewing those findings in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In addition, we defer to a ULJ's credibility determinations. *Id.* at 345. But, "[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006). Failure to do so is a basis for remand. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007).

a. *Quit or discharge*

Relator argues that she did not quit her employment with the Rolf Flaig Insurance Agency but was discharged. An employee who quits employment is disqualified from receiving unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2006). An employee quits “when the decision to end the employment was, at the time the employment ended, the employee’s.” *Id.*, subd. 2(a) (2006). An employee is discharged “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) (2006). Whether an employee quit or was discharged is a question of fact. *Midland Elec., Inc., v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

Relator argues that the ULJ should have found her testimony credible and determined that she was discharged—denied the opportunity to return to a full-time job. She argues that Flaig’s testimony at the hearing was inconsistent with documents he submitted to the department. In those documents, Flaig states that relator left her employment on September 15. According to relator, this is inconsistent with Flaig’s testimony that relator quit on November 2. But Flaig’s documentary assertions that relator quit on September 15 are unsurprising considering that relator completed her last day of work on that date. Furthermore, Flaig submitted an e-mail to the department at the same time as his other paperwork that more fully treated the facts as he understood them. In that e-mail, Flaig states that relator quit on November 2. This submission was made

prior to any of relator's. Thus, these alleged discrepancies do not work to undermine Flaig's credibility.

Furthermore, the ULJ specifically credited Flaig's testimony in its initial determination and upon reconsideration. The ULJ made that credibility decision because a former co-worker of relator's heard that she was to return to work full time, and because shortly after Peterson quit working for the insurance agency, Flaig hired a full-time person to replace her.¹ Although these findings do not address "the witness's interest in the case's outcome, the source of the witness's information, the witness's demeanor and experience, and the reasonableness of the witness's testimony," *Wichmann*, 729 N.W.2d at 29, the findings provide support for the ULJ's credibility determination, thus adequately but barely fulfilling Minn. Stat. § 268.105, subd. 1(c). Thus, we have no warrant to overturn the ULJ's finding that relator quit her employment.

b. Good cause

An employee who quits employment may nonetheless receive unemployment benefits if the employee "quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). A good reason caused by an employer 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,

¹ Relator argues that because her position required training, the fact that Flaig hired a person on November 7, 2006, only five days after her termination, further makes Flaig's testimony not credible. But Flaig did not testify that relator's replacement began work on November 7, 2006; he testified that he made an offer on that date. It is unclear on this record when that person's employment began.

reasonable worker to quit and become unemployed rather than remaining in the employment.” *Id.*, subd. 3(a) (2006).

In her brief, relator implies that she feels that she had a good reason to quit her employment. She makes this statement in a portion of her brief directed to an argument that the ULJ erred when she did not allow relator to subpoena a witness.² She states that Flaig had a pattern of threatening to lay off employees, and complaining about financial and health hardships. But when this topic was discussed at the hearing, relator never claimed that it caused her to quit; she always maintained that she was discharged. Instead, she offered it as a reason why she was looking for other work. On appeal, she does not make further efforts to show how any actions of Flaig constituted a good reason to quit caused by her employer. On this record, we cannot hold that such a reason existed.

2. *Process*

Relator also argues that she was prejudiced because the ULJ did not allow her to subpoena a witness. Subpoenas are available to a party “upon a showing of necessity,” but may be denied if the matters sought would be “irrelevant, immaterial, or unduly cumulative.” Minn. R. 3310.2914, subd. 1 (2007).

According to relator, the witness that she wanted to subpoena was a former employee who would have testified that Flaig made statements indicating he may lay workers off, and repeatedly discussed the insurance agency’s financial hardships with employees. Relator argues that this testimony would have helped to rebut evidence that

² That argument is considered in Part 2 of this opinion.

she was seeking other employment. But the ULJ did not rely on the fact that relator was seeking other employment in making her decision. In any event, relator admitted during the hearing that she was looking for work. Likewise, Flaig admitted he had made statements which could lead others to believe that a potential for layoffs existed. Thus, any testimony would have been cumulative and irrelevant to the ULJ's conclusion. As such, relator's substantial rights were not prejudiced by the department's decision not to subpoena the witness.

Affirmed.