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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1063**

Julie Kowalczyk,  
Relator,

vs.

Lake Pointe Chiropractic Centre, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 1, 2011  
Affirmed  
Larkin, Judge**

Department of Employment and Economic Development  
File No. 24840295-3

Julie Kowalczyk, St. Michael, Minnesota (pro se relator)

Lake Pointe Chiropractic Centre, Inc., Minneapolis, Minnesota (respondent-employer)

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

Considered and decided by Stauber, Presiding Judge; Wright, Judge; and Larkin,  
Judge.

## **UNPUBLISHED OPINION**

**LARKIN**, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's determination that she is ineligible to receive unemployment benefits because she quit her employment. We affirm.

### **FACTS**

Relator Julie Kowalczyk was employed full-time as a billing specialist at Lake Pointe Chiropractic Centre, Inc., from April 2007 through January 22, 2010. In November 2009, Kowalczyk asked Lake Pointe if she could begin working part-time on February 1, 2010. Kowalczyk expected to receive social security death benefits following her husband's recent passing. Lake Pointe denied the request. In response, Kowalczyk informed Lake Pointe that she did not intend to work for Lake Pointe beyond February 1.

On December 6, 2009, Kowalczyk e-mailed Lake Pointe that her plans to work part-time were being "put on hold" and asked whether she "could stay employed at Lake Pointe." Lake Pointe denied the request. Kowalczyk's last day at Lake Pointe was on January 22, 2010. Kowalczyk took vacation pay for the following week.

Kowalczyk established a benefits account with the Department of Employment and Economic Development (DEED). A department adjudicator found that Kowalczyk was ineligible to receive unemployment benefits. Kowalczyk appealed this determination, and a telephonic evidentiary hearing was held before an unemployment-law judge (ULJ). Dr. Rebecca Adamek appeared on behalf of Lake Pointe. Kowalczyk

also appeared. The ULJ determined that “Kowalczyk quit [her] employment and is ineligible for the payment of unemployment benefits.” Kowalczyk filed a request for reconsideration. The ULJ affirmed the initial determination, and this certiorari appeal follows.

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

Kowalczyk argues she was discharged from Lake Pointe and that the ULJ erred by concluding that she quit. Our review of the ULJ’s eligibility determination is governed by Minn. Stat. § 268.105, subd. 7(d) (2008), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

. . .

(5) unsupported by substantial evidence in view of the entire record as submitted[.]

An employee who quits employment is generally ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009).<sup>1</sup> “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) (Supp. 2009). “An employee who seeks to withdraw a previously submitted notice of quitting is

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<sup>1</sup> There is an exception for an employee who quits for a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1). Kowalczyk does not claim that she quit because of a good reason caused by Lake Pointe.

considered to have quit the employment if the employer does not agree that the notice may be withdrawn.” Minn. Stat. § 268.095, subd. 2(c) (Supp. 2009).

“Whether an employee has been discharged or voluntarily quit is a question of fact.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). The ULJ’s findings of fact are viewed in the light most favorable to the decision, and we defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb factual findings if they are supported by substantial evidence. *Id.*

Kowalczyk summarizes her position on appeal as follows: “They gave me my Termination date[.] I did not quit[.] . . . [T]hey terminated me.” But the ULJ determined that “[t]he preponderance of the evidence indicates that, although Kowalczyk may not have used the word ‘quit,’ she let her employer know she had no intention of staying employed beyond February 1, 2010, if she could not work part-time.”

At the evidentiary hearing, Dr. Adamek testified that, after Lake Pointe informed Kowalczyk that it would not reduce her hours, Kowalczyk told Lake Pointe that she “would have to quit.” Kowalczyk denied making this statement. But when the ULJ asked Kowalczyk whether she told Lake Pointe that she would stay on full-time after Lake Pointe informed her that it would not reduce her hours, Kowalczyk responded, “No, not at that time.” And Kowalczyk testified that although she really did not “want to go full-time,” the more she thought about it, “since [Lake Pointe] hadn’t hired anybody and . . . hadn’t really gone forward in looking for anybody,” she decided that she would like to keep her full-time position and “stay with them.” When the ULJ asked Kowalczyk

why she thought Lake Pointe would be looking for a person to fill her position if, in fact, she had not notified Lake Pointe that she was leaving, Kowalczyk could not provide a reasonable explanation.

In response to Kowalczyk's testimony, Dr. Adamek testified that she "vividly remember[ed]" having conversations with Kowalczyk in which there was "obvious talk" of the plan for Kowalczyk to "be moving on" by February. Dr. Adamek also testified that "what came back to [Lake Pointe]" at a meeting with Kowalczyk was that Kowalczyk would not be able to work at Lake Pointe if she could not work part-time. Although Dr. Adamek conceded that there may have been miscommunication between the parties, Dr. Adamek testified that Lake Pointe interpreted "what happened as [Kowalczyk] quitting."

Although the testimony was conflicting, the ULJ's conclusion that Kowalczyk "let her employer know she had no intention of staying employed beyond February 1, 2010, if she could not work part-time" indicates that the ULJ found Dr. Adamek's testimony more credible. And the evidence supports this credibility determination. For example, after Lake Pointe denied Kowalczyk's request to reduce her hours, Kowalczyk sent Lake Pointe an e-mail stating: "[s]o if you haven't found anyone to fill my position I was wondering if I could stay employed at Lake Pointe." In denying Kowalczyk's request for reconsideration, the ULJ reasoned that "[Kowalczyk] must have realized she gave her employer [the] impression [that she did not intend to continue working after February 1] or she would not have returned later and asked if she 'could stay.'" This explanation adequately supports the ULJ's resolution of the conflicting testimony. *See* Minn. Stat.

§ 268.105, subd. 1(c) (Supp. 2009) (stating, “[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”). And we must defer to the ULJ’s credibility determination. *See Skarhus*, 721 N.W.2d at 344 (stating we defer to the ULJ’s credibility determinations).

Kowalczyk also complains that her employer’s decisions in this matter were based on the behavior of a previous employee. But her employer’s reasons for not allowing her to withdraw her notice of quitting is not relevant to the determination of whether she quit. Because the ULJ’s finding that Kowalczyk quit her employment is supported by substantial evidence, we affirm.

**Affirmed.**

Dated:

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Judge Michelle A. Larkin