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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0592**

Marlene K. Anderson,
Relator,

vs.

Gerber & Haugen, PLLP,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed December 3, 2012
Reversed
Stauber, Judge**

Department of Employment and Economic Development
File No. 29025432-3

Thomas H. Boyd, Eric D. Sidler, Winthrop & Weinstine, P.A., Minneapolis, Minnesota
(for relator)

Gerber & Haugen, P.L.L.P., Slayton, Minnesota (for respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On certiorari appeal from the decision of an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit without good reason caused by her employer, relator argues that (1) the ULJ erred by determining that she quit rather than that she was laid off; (2) if she did quit, it was for good reason caused by her employer; and (3) she was not required to complain to the employer first because it was his harassing conduct that caused her to quit. Because the evidence in the record demonstrates that relator did not quit her employment, but was, in fact, laid off, we reverse.

FACTS

In May 2009, relator Marlene K. Anderson began working full time as an audit assistant for Gerber & Haugen, P.L.L.P. In the fall of 2011, Gerber & Haugen lost one of its major clients. As a result, relator's supervisor James Gerber informed relator that if she were to remain employed full time, he would have to give her other non-auditing duties that were then being performed by other Gerber & Haugen employees. Gerber told relator that he would have to lay her off unless she agreed to take on these additional duties. According to relator, this was "an impossible situation" because one of her co-workers was her sister-in-law, and it was possible that the sister-in-law would be laid off or have her hours reduced if relator assumed the additional duties.

On December 12, 2011, relator arrived at work and proceeded to work from a vacant office because she was in the process of switching offices, and her new office was

not yet ready for occupancy. When Gerber arrived at work later that morning, he was agitated and in a foul mood as a result of a particularly busy and stressful audit season. Gerber became more agitated when he saw relator working from the vacant office. He was upset at relator for not emptying out her new office herself, threw a folder down on her desk, told her what he needed done that day, and walked out.

Gerber's outburst left relator shaking and crying. According to relator, Gerber consistently treated her in this manner, and his latest outburst left her unable to complete any work. She later went to Gerber's office and told him that she did not like the way he was treating her. After a brief conversation, relator told Gerber that "if you want to lay me off, you should just lay me off." Gerber responded saying: "fine, done." Relator then left the office.

Relator established a benefit account with respondent Minnesota Department of Employment and Economic Development (department), and a department adjudicator initially determined that relator was ineligible for unemployment benefits because she quit without good reason caused by her employer. Relator appealed that decision and, following a de novo hearing, the ULJ upheld the initial determination. Relator subsequently sought reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

DECISION

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law.

Minn. Stat. § 268.105, subd. 7(d) (2010). We view factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator challenges the ULJ's decision that she voluntarily quit her employment. "Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols v. Reliant Eng'g Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). "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." Minn. Stat. § 268.095, subd. 5(a) (2010).

Here, the ULJ found that "Gerber had continuing work available for [relator] but she elected not to continue the employment. Thus, she quit." Relator contends that this finding is not supported by the record because the weight of the evidence shows that she was laid off. We agree. The record reflects that Gerber & Haugen had just lost one of its largest clients. The record also reflects that in light of the lost business, the firm may have been forced to lay off employees. In fact, the record reflects that relator was informed that if she did not agree to undertake certain tasks performed by other employees, Gerber would be forced to lay relator off. The record further reflects that relator was unhappy with the way she was treated by Gerber, and that after Gerber's outburst on December 12, relator told Gerber that she was unhappy with the way he

treated her. Relator then stated: “So, I guess if you want to lay me off, you should go ahead and lay me off.” According to relator, Gerber responded by stating: “fine then.” Gerber’s testimony essentially mirrored relator’s recollection of the events, stating that he responded to relator’s comment by replying: “fine, done.” On its face, this testimony demonstrates that Gerber agreed to lay relator off. *See* Minn. Stat. § 268.095, subd. 5(a) (stating that “[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”).

The department argues that relator quit and was not discharged because there was work available to relator and “she was the one who asked her employer to lay her off.” To support its claim, the department cites *E.H. Schrupp & Assocs. v. Stansberry*, in which a ULJ found that Stansberry quit his employment when he told the construction foreman to lay him off and the foreman did so. 412 N.W.2d 808, 809 (Minn. App. 1987). Specifically, the ULJ determined that a former employee of a lawn-maintenance service was entitled to receive benefits after he “adamantly requested [the employer] to lay him off” and the employer granted his request, even though a few weeks of work remained in the lawn-maintenance season. *Id.* This court reversed, concluding that the employee voluntarily quit his job and was not entitled to benefits. *Id.* at 810. In so doing, we emphasized that the employee “was not notified that he was being laid off, and the ‘cause’ of his unemployment was not a pending layoff, but a voluntary decision on his part to leave.” *Id.*

The facts in *Stansberry* are distinguishable. Here, the record reflects that on the date relator's employment ended, she complained to her employer about the way she was treated. According to relator, Gerber responded by saying that she "had no respect for deadlines." Relator further testified that she then told Gerber that "well, I'm here. I'm asking for things to do. And, I'm not being treated very well. So, I guess if you want to lay me off, you should go ahead and lay me off." Gerber did not refute this testimony. The exchange between Gerber and relator is substantial and undisputed evidence that, rather than requesting to be laid off as in *Stansberry*, relator was asking her supervisor why he would not lay her off if he did not approve of her work. In response to her question, Gerber said "fine, done," indicating that he did not approve of her work and, as a result, her employment was terminated. Based on this conversation, an average reasonable employee would not believe that her employer would allow her to work for that employer in any capacity.

We also note that the record reflects that the ULJ consistently asked relator why she quit. The ULJ's questions indicate that she assumed the fact that she was trying to determine—whether relator quit or was laid off. In any event, the record reflects that relator did not quit, but instead that she was laid off. Accordingly, the ULJ erred by concluding that relator was ineligible for unemployment benefits.

Reversed.