

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2118**

Diane Rethke,
Relator,

vs.

Sunrise Senior Living Management, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 20, 2012
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 28050310-3

Diane Rethke, Maple Lake, Minnesota (pro se relator)

Sunrise Senior Living Management, Inc., c/o TALX UCM Services, Inc., St. Louis,
Missouri (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges a determination by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she quit her employment without a good reason caused by her employer. We affirm.

FACTS

Relator Diane Rethke worked at respondent Sunrise Senior Living Management, Inc. (Sunrise) as a server beginning on December 8, 2009. On June 11, 2011, Rethke told a coworker that “[a resident] should be slapped” because the resident wanted more food at lunch. The next day, Rethke refused to help a legally blind resident pour a beverage. As a result of these two incidents, Cheryl Klinkhammer, the executive director of Sunrise, sent Rethke home early on June 14 on paid administrative leave, advising Rethke that the incidents would be investigated.

Later that day, Rethke returned to work and submitted a resignation letter. The letter stated that Rethke’s last day would be July 5, 2011. Klinkhammer accepted the resignation but told Rethke that her employment would end immediately. Klinkhammer never told Rethke that she was discharged.

Rethke applied to respondent Minnesota Department of Employment and Economic Development (DEED) for unemployment-compensation benefits. DEED determined that she is ineligible for benefits because she quit her employment for personal reasons not attributable to Sunrise. Rethke appealed and, following a hearing, a ULJ determined that Rethke quit her employment in anticipation of being discharged and

did not have a good reason to quit that was caused by Sunrise. Upon request for reconsideration, the ULJ affirmed the earlier decision. This certiorari appeal follows.

D E C I S I O N

An applicant who quits employment is generally ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). A quit occurs when the decision to end the employment was the employee's at the time the employment ended. *Id.*, subd. 2(a) (2010). By contrast, 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). An employee who quits "because of a good reason caused by the employer" may still be eligible for benefits. *Id.*, subd. 1(1).

We review de novo a ULJ's determination that an applicant is ineligible for unemployment benefits. *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). We review findings of fact in the light most favorable to the ULJ's decision and will not disturb them if they are substantially supported by the evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee was discharged or voluntarily quit is a question of fact. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

Rethke first challenges the ULJ's finding that she quit her employment, citing a July 15, 2011 letter she received from Sunrise that states that Sunrise terminated her employment. The ULJ questioned Rethke about this letter:

Q. All right. But was [the letter] handed to you before you quit?

A. No.

.....

Q. But I'm concerned about what actually happened and what was actually said before you quit, Ms. Rethke.

A. Okay, Okay.

Q. So, at any point before you quit, did Ms. Klinkhammer tell you that you were being fired?

A. No, she did not.

It is undisputed that Sunrise placed Rethke on paid leave pending investigation of the two incidents involving residents. Rethke responded by resigning. Although she may have anticipated adverse consequences following Sunrise's investigation, we conclude that substantial evidence supports the ULJ's determination that Rethke quit her employment.

Rethke next argues that even if she did quit, she had good reason to do so because Sunrise was likely to discharge her and was in the process of phasing out some of the server positions. We disagree. While Rethke's concern about the impact of a discharge on her future employment options may be a good personal reason for quitting, it is not a good reason caused by the employment. *See Erb v. Comm'r of Econ. Sec.*, 601 N.W.2d 716, 719 (Minn. App. 1999) (holding that fear of potential termination does not justify an award of benefits). And the record demonstrates that while some Sunrise server positions changed during the relevant time frame, Rethke's position still existed on June 14.¹ *See*

¹ Rethke also contends that she was discharged as retaliation for her criticism of management and the working conditions at Sunrise. Because this argument is being raised for the first time on appeal, we do not consider it. *See Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 512 (Minn. App. 1997) (stating that issues not raised to the ULJ will not be considered on appeal).

Minn. Stat. § 268.095, subd. 3(e) (2010) (“Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting.”). On this record, we conclude that Rethke did not quit her employment for a good reason caused by Sunrise.

Affirmed.