

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0130**

Kim M. Foss,
Relator,

vs.

St. Luke's Hospital Association of Duluth,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 15, 2008
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 14624 06

Kim M. Foss, 8576 South Maki Road, Solon Springs, WI 54873 (relator pro se)

St. Luke's Hospital Association of Duluth, 915 East First Street, Duluth, MN 55805
(respondent)

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

Considered and decided by Ross, Presiding Judge; Lansing, 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UNPUBLISHED OPINION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 judge's decision that she quit her employment without good reason caused by the employer and was therefore disqualified from receiving unemployment benefits. Because the record supports the finding of a quit and there was no error of law, we affirm.

FACTS

Relator Kim Foss worked as a maintenance assistant at St. Luke's Hospital from January 1974 until she resigned on September 21, 2006. Her normal work hours were 7:00 a.m. to 3:30 p.m. and she was required to "swipe in" with her employment badge to record her start time. If she failed to swipe in, she was required to fill out a "Missed Swipe Report" and have her supervisor approve it and manually enter the start time into the time system. On two occasions in August 2006, the security cameras recorded relator arriving for work around 7:30 a.m., even though she manually recorded her start time as 6:00 a.m. On these two occasions, relator did not swipe in, fill out a "Missed Swipe Report," or get her supervisor's approval.

On September 20, 2006, the human resources director and relator's supervisor informed her that they investigated the August 2006 incidents and concluded that she had falsified her time records. Relator denied falsifying her time records, stating that she arrived at work at 6:00 a.m. on the mornings in question. She explained that there are ways to get to her office without being recorded by the security cameras, that she used

these routes on the mornings in question, and that the videotape of her at 7:30 a.m. was when she was on her way to breakfast.

The director gave relator the opportunity to resign in lieu of bringing the matter to the chief executive officer, who makes termination decisions. The director told relator that she did not have to decide immediately and that she could consult with counsel and family members. Further, relator was told that if she resigned it would look better for future employment and that she would be paid her remaining leave balances. Relator stated that she would call the next morning to communicate her decision. On September 21, relator called the director and indicated she was resigning because she did not want to get fired and felt she did not have a choice.

Relator applied for unemployment benefits with the Department of Employment and Economic Development, but was denied. Following an evidentiary hearing, the unemployment judge determined that relator quit her employment without good reason caused by the employer and was therefore disqualified from receiving benefits. Subsequently, relator filed a request for reconsideration and the judge filed an order affirming his decision.

DECISION

Relator argues that the unemployment judge's decision is not supported by the record. This court may reverse or modify the decision if relator's substantial rights have been prejudiced because the decision is affected by legal error, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). We review the judge's findings in the light most favorable to the decision and

will not disturb findings that are reasonably supported by the record. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

Relator contends that the judge's determination that she voluntarily resigned is not supported by substantial evidence. Although she does not specifically argue that she was discharged, this is implicit in her challenge. The issue of whether an employee quit employment or was discharged is a question of fact. *Midland Elec., Inc., v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). A quit 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) (2006). A discharge, on the other hand, 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) (2006).

The record substantially supports the unemployment judge's determination that relator voluntarily quit her employment. After being presented the option of either resigning or bringing the matter to the chief executive, relator was told she could consult with counsel and her family. Although relator testified that the director told her she would "probably be dismissed because of this," she did not assert that the director fired her. When relator called the director and stated her resignation, the decision was her own.

An employee who quits employment is disqualified from receiving unemployment benefits unless the employee "quit the employment because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1) (2006). According to the

unemployment benefits statute, “[n]otification of discharge in the future . . . shall not be considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(e) (2006). This principle applies even if the employer poses an ultimatum to the employee. *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984) (holding that employee who chooses voluntary resignation when faced with either discipline or resignation is disqualified from receiving unemployment benefits). Whether an employee had good reason to quit caused by the employer is a question of law, which we review de novo. *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003).

The record supports the unemployment judge’s conclusion that the threat of dismissal was the sole reason relator resigned. Relator testified that prior to being approached by the director in September 2006, she had not contemplated quitting and that she did not submit her resignation for any other reason than the threat of termination. Thus, the judge did not err in concluding that relator’s decision to resign “was not a good reason caused by St. Luke’s” and that relator was therefore disqualified from receiving unemployment benefits.

Relator makes a number of arguments to support her contention that she did not engage in employment misconduct. But because she voluntarily quit employment and is thereby disqualified from receiving unemployment benefits, these arguments need not be addressed.

Affirmed.