STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1158

Scenic Title and Abstract, Inc.,
Relator,

vs.

Stephanie E. Hann,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 12, 2008
Affirmed
Minge, Judge

Department of Employment and Economic Development
File No. 1169 07

William D. Paul, 1217 East First Street, Duluth, MN 55805-2402 (for relator)

Stephanie E. Hann, 1006 South Oak Street, Cloquet, MN 55720-1412 (pro se respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent department)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Relator employer challenges the determination of an unemployment law judge (ULJ) that respondent employee was discharged from her employment and accordingly qualified for unemployment benefits. Relator argues that respondent quit and was not discharged. Because substantial evidence supports the ULJ's finding that relator would no longer allow respondent to work for it in any capacity and because this constitutes a discharge, we affirm.

FACTS

Relator Scenic Title and Abstract, Inc. (Scenic Title) employed respondent Stephanie Hann from September 19, 2005, until November 7, 2006. Scenic Title is an abstract company and serves as a closing agent in real estate transactions. Hann worked 40 hours per week at $10 per hour as a closer for Scenic Title.

On November 3, 2006, during a telephone conversation, one of Scenic Title's significant customers asked Hann why the completion of certain title documents was delayed. In reply, Hann made a disrespectful statement regarding Kevin Eckholm, co-owner of Scenic Title, and Linda Eckholm, his wife and a Scenic Title employee. Another employee overheard Hann's comment and reported it to Sharon Hill, another co-owner of Scenic Title. Hill verified the incident with the customer, who stated that he considered the comment to be inappropriate and offensive. However, the customer did not think the comment was true, nor did he demand that Hann be fired or take his business elsewhere.

Soon after this incident, Hill had a meeting with Hann to discuss her comment about the Eckholms. Hill informed Hann that the Eckholms were no longer willing to work with her and that she could either quit and accept Scenic Title's offer of severance pay or she would be discharged. After the meeting, Hann collected her severance pay and left Scenic Title.

Hann applied for unemployment benefits and indicated that she had been discharged from her employment. She was awarded unemployment benefits by the Department of Employment and Economic Development. Scenic Title appealed; the decision was confirmed by the ULJ and affirmed on reconsideration. This certiorari appeal follows.

D E C I S I O N

Scenic Title argues that we should reverse the ULJ's finding that Hann was discharged and instead hold that she quit her employment. Scenic Title argues that Hann quit when faced with the possibility of being fired and that continuing work was available. Scenic Title does not claim and this appeal does not consider two other issues: whether Hann was discharged for misconduct or whether she quit for good cause.

We may reverse or modify the ULJ's decision if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(4)–(6) (2006). "Whether an employee has been discharged or voluntarily quit is a question of fact." *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). The ULJ's factual findings are reviewed "in

the light most favorable to the decision" while "giving deference to the credibility determinations made by the ULJ." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Both the terms "quit" and "discharge" are defined by statute. Minn. Stat. § 268.095, subds. 2(a), 5(a) (2006). A quit occurs "when the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a). By contrast, a discharge 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).[1]

Prior to the enactment of the definitions in Minn. Stat. § 268.095, Minnesota courts held that an employee "quit" when the employee, faced with the possibility of disciplinary actions, elected to terminate his or her employment rather than await an ultimate determination by the proper authority. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) ("[W]hen an employee chooses to leave the employment rather than have the employee's employment status determined by a board or other ultimate discharge authority, it is a voluntary quit without good cause attributable to the employer."); *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 891 (Minn. App. 1984) ("When an employee, in the face of allegations of misconduct, chooses to leave his employment rather than exercise his right to have the allegations determined, such action supports a finding that the employee voluntarily left his job without good cause.")

[1] The statutes also provide that if after being notified of a prospective layoff an employee quits, the employee is disqualified from receiving benefits. Minn. Stat. § 268.095, subd. 2(b) (2006).

(quoting *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357 (Minn. App. 1983)); *Ramirez*, 340 N.W.2d at 357–58 (determining that an employee quit of his own volition when the employee tendered his resignation and the decision to terminate his employment had not yet come down through the "chain of command").

In *Bongiovanni*, the employee did not face the risk of being discharged, but chose to resign anyway. 370 N.W.2d at 699. In *Ramirez* and *Seacrist*, though the employers had initiated disciplinary actions against the employees, no final employment decision had been reached at the time of the employees' resignations. *Ramirez*, 340 N.W.2d at 357–58; *Seacrist*, 344 N.W.2d at 891–92. Moreover, in both *Ramirez* and *Seacrist*, the employees had substantial procedural rights that the employees could have exercised before they were discharged. *Ramirez*, 340 N.W.2d at 356; *Seacrist*, 344 N.W.2d at 891–92. Bongiovanni, Ramirez, and Seacrist quit because each individual voluntarily made the decision to end their employment; the employer's position was not a foregone conclusion.

Here, there was testimony that Hann was not simply threatened with the possibility of discharge. She testified that she was told that she was no longer welcome to work at Scenic Title and that she had to choose between quitting or involuntary termination. Either way, Scenic Title had decided to end Hann's employment. Although there was some contrary evidence, the ULJ concluded that Hann had been told that the Eckholms would no longer work with Hann in any capacity. Because there was disputed testimony, the ULJ had to make a factual determination of credibility. This court defers to the ULJ on credibility determinations. *Skarhus*, 721 N.W.2d at 344. In accordance

with this factual determination, the ULJ found that Hann was discharged because a reasonable employee in Hann's circumstances would conclude that she could no longer work for the employer. *See* Minn. Stat. § 268.095, subd. 5(a) (defining "discharge").

We conclude that the ULJ's factual determination that Hann was discharged from her employment is based on substantial evidence.[2]

Affirmed.

Dated:

[2] As previously noted, the issue of whether respondent was discharged for employment misconduct was not briefed or argued and we do not consider the issue. *See Melina v. Chapman*, 327 N.W.2d 19, 20 (noting that issues not briefed on appeal are deemed waived).