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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1397**

Dianne M. Mallery,
Relator,

vs.

Medtronic Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed July 7, 2009
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 20805706-3

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Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the decision by the ULJ that she was not eligible to receive unemployment benefits, relator argues that (1) the record does not reasonably support a determination that she quit, where both the employer and the employee testified that she was discharged and (2) even if she did quit, it was for good reason caused by the employer. We affirm.

FACTS

Relator Dianne Mallery began working at Medtronic as an associate tax accountant in March 1991. In early 2007, relator's work performance began to suffer because she was having difficulty adjusting to a new financial accounting system implemented by Medtronic. A few months later, relator was placed on an informal performance plan that required her to meet once a week with her manager to discuss her job performance. Despite her best efforts, however, relator's job performance did not improve. Consequently, relator was told in November 2007 that she would need to be placed on a formal, more rigorous, performance plan that would last for three months. At that time, relator's supervisor told her that he did not believe she would survive the performance plan, and that relator would likely be terminated at the end of the three-month period. Relator was then given the option of taking a severance package, in which she could utilize Medtronic services to find other, more suitable employment outside the company. Under the terms of the severance option, relator's last day of work would be

December 31, 2007, but she would be paid through April 18, 2008. Relator chose to accept the severance package.

Relator established a benefit account with respondent Department of Employment and Economic Development (department), and a department adjudicator initially determined that relator was not entitled to unemployment benefits because she quit her employment without good reason caused by her employer. Relator appealed and, following a de novo hearing, an unemployment law judge (ULJ) affirmed the initial determination. Relator subsequently filed a request for reconsideration, and the ULJ affirmed her decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (Supp. 2007). Whether an individual quit employment and the reason the individual quit are questions of fact for the ULJ to determine. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

A person who quits employment without a statutory justification, such as good reason caused by her employer, is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007). A quit occurs when the employee makes the decision to end employment. *Id.*, subd. 2(a) (Supp. 2007). “An employee who has been notified that the employee will be discharged in the future, who chooses to end the

employment while employment in any capacity is still available, is considered to have quit the employment.” Minn. Stat. § 268.095, subd. 2(b) (Supp. 2007). A discharge occurs when an employer’s words or actions would lead a reasonable employee to believe that she is no longer allowed to work for the employer. *Id.*, subd. 5(a) (Supp. 2007).

Relator argues that the record does not reasonably support the ULJ’s determination that she quit because both she and her employer testified that she was discharged. Thus, relator argues that the ULJ erred in concluding that she was ineligible to receive unemployment benefits.

We disagree. The record reflects that relator’s supervisor testified that “I would just say, in my opinion, I’d like it on the record that it was a discharge.” But, it is the department’s responsibility to determine whether or not an applicant is eligible to receive unemployment benefits, and even an “agreement between an applicant and an employer is not binding on the commissioner in determining an applicant’s entitlement.” Minn. Stat. § 268.069, subd. 2 (Supp. 2007). Here, the record reflects that in November 2007, relator was told that she would be placed on a formal, more rigorous performance plan. The record also reflects that, at that time, relator’s supervisor informed her that he did not believe she would survive the performance plan, and that she would likely be terminated at the end of the three-month period. Relator was given the option of being placed on the more rigorous performance plan, or quitting her employment and accepting a severance package. It is undisputed that relator chose to accept the severance package. Thus,

although relator's supervisor testified that she was discharged, the evidence in the record supports the ULJ's conclusion that relator quit her employment.

Relator also contends that even if she did quit her employment, she is eligible to receive benefits because she quit for good reason caused by her employer. An applicant who quit employment is not ineligible for unemployment benefits if the applicant quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1). A "good reason" is a reason that (1) [] "is directly related to the employment and for which the employer is responsible;" (2) [] "is adverse to the worker;" and (3) [] "would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." *Id.*, subd. 3(a) (Supp. 2007). "[T]here must be some compulsion produced by extraneous and necessitous circumstances." *Ferguson v. Dep't of Employment Servs.*, 311 Minn. 34, 44 n.5, 247 N.W.2d 895, 900 n.5 (1976). The reasonable-worker standard is objective and is applied to the average person rather than the supersensitive. *Id.*

Here, relator argues that she quit for good reason caused by her employer because her employer changed its system for tax accounting, and when relator could not adapt, her employer told her that she would be terminated. But relator's dissatisfaction with Metronic's decision to change its tax accounting system is not a good reason to quit for purposes of receiving unemployment benefits. Moreover, even though relator was told that she would likely be terminated in the future due to her inability to adjust to the new tax accounting system, her decision to end her employment before she was terminated constitutes a quit for purposes of unemployment benefits. *See* Minn. Stat. § 268.095,

subd. 2(b). Therefore, the record supports the ULJ's findings that relator quit without good reason caused by her employer, and the ULJ did not err in concluding that relator was disqualified from receiving unemployment benefits.

Affirmed.