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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1593**

Connie J. Escobedo,  
Relator,

vs.

St. Paul Cardiology, P.A.,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed August 25, 2009  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 20952327-3

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Larkin, Judge.

## **UNPUBLISHED OPINION**

**ROSS, Judge**

We must decide whether an unemployment law judge (ULJ) properly concluded that an employee quit when she claims to have misunderstood her employer's instruction to return to work after a leave of absence. Connie Escobedo brings this certiorari appeal from the ULJ's decision that she quit her job and was therefore ineligible to receive unemployment benefits. She disputes certain factual findings made by the ULJ bearing on whether she quit, and she asserts that the ULJ conducted an unfair hearing. Because the record supports the ULJ's finding that Escobedo quit, and because the question of fairness was not first raised before the ULJ, we affirm.

### **FACTS**

In May 2008, Connie Escobedo told her employer, St. Paul Cardiology, that she was scheduled to have necessary surgery on May 6 and would need two weeks off. Although Escobedo did not have sufficient paid-time off available to cover the absence, St. Paul Cardiology permitted her to take the time off work, but without pay. Escobedo began her period of unpaid leave the day before her surgery. After the operation, Escobedo explained to her immediate supervisor that she planned to return to work on May 20. But as May 20 approached, Escobedo told her supervisor that she could not return to work because of complications. St. Paul Cardiology sent a certified letter requiring Escobedo to provide medical documentation of the extension by June 2, and to explain when she could return to work. Escobedo, who was not home to receive the certified letter, did not retrieve it from the post office until June 4.

Because St. Paul Cardiology did not receive the information it requested by June 4, it sent a letter terminating Escobedo's employment. On June 5, Escobedo had her doctor send a medical release by facsimile to St. Paul Cardiology, indicating that Escobedo could return to work on June 9. Satisfied with the documentation, St. Paul Cardiology called Escobedo and informed her that it would rescind her termination and that she could return to work on June 9. June 9 arrived, but Escobedo did not report for work or call to explain her absence. As a consequence, St. Paul Cardiology sent Escobedo a second termination letter, stating that she could not return to work.

Escobedo disputes that St. Paul Cardiology ever told her she could return to work, and she insists that she did not return to work by June 9 because she believed she had already been terminated. The ULJ concluded that Escobedo quit without good reason caused by St. Paul Cardiology and that she therefore was not entitled to unemployment benefits. Escobedo filed an administrative appeal, and the ULJ affirmed his findings and conclusion. Escobedo now seeks this court's certiorari review of the ULJ's determination.

## **D E C I S I O N**

### **I**

An employee who quits without good reason caused by her employer is ineligible from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2007). Whether an employee quit is a question of fact, and this court will not disturb a ULJ's finding if it is supported by substantial evidence in the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552

(Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003); *see* Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Moore Assocs., LLC v. Comm’r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted).

The ULJ found that on June 6, a representative of St. Paul Cardiology called Escobedo and told her that St. Paul Cardiology had reversed its decision to terminate her and that Escobedo could return to work on June 9. This decision is supported by substantial evidence in the record.

Escobedo testified that St. Paul Cardiology’s acting administrator Anne McCarthy called and told her that “the letters must have crossed in the mail and that they couldn’t go backwards at this time.” Escobedo testified that she could not remember much about the phone call because she was very upset at having been terminated, but she testified that she did not recall having been offered an opportunity to return to work on June 9. Escobedo’s supervisor, Carol Martens, contradicted Escobedo’s testimony, stating that Anne McCarthy called Escobedo on June 6 and advised her that she could return to work on June 9.

In light of the conflicting testimony, the ULJ called McCarthy to testify about the June 6 telephone call. McCarthy testified that she told Escobedo that St. Paul Cardiology wanted to rescind her termination. She acknowledged that “maybe [Escobedo] didn’t understand that, but I did say we would like to rescind the termination. And then . . . she said, okay, then you want me in on Monday, and I said yes, the day that your doctor originally told you you could come back.”

The ULJ gave Escobedo an opportunity to cross-examine McCarthy. Escobedo challenged McCarthy's recollection that she had invited Escobedo to return to work, and McCarthy answered, "My response is I thought it was clear in my mind that I had communicated it to her that we did want her back." McCarthy further explained that during the telephone call she had mentioned that when Escobedo returned, Escobedo and Martens would discuss Escobedo's performance review. On the day of her phone conversation with Escobedo, McCarthy sent an electronic-mail message to one of St. Paul Cardiology's doctors summarizing her phone conversation, which corroborates her testimony.

"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) (Supp. 2007). The ULJ discredited Escobedo's claim that she did not return to work because she believed she had been terminated and that on June 6 she was again "verbally terminated" over the phone. The ULJ found that Escobedo was instructed to return to work on June 9, and he therefore concluded that her failure to appear reflected her decision to end her employment.

This court considers factual findings in the light most favorable to the ULJ's decision and defers to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. When credibility bears significantly on the outcome, a ULJ must state a reason for believing or disbelieving conflicting evidence. Minn. Stat. § 268.105, subd. 1(c) (Supp. 2007); *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). The ULJ found Martens's and McCarthy's testimony more credible because they

“describe[d] a more likely chain of events” and because he found them to be generally more persuasive than Escobedo. On that basis, the ULJ credited McCarthy’s testimony that she told Escobedo in the June 6 phone call that Escobedo should return to work on June 9. We recognize that the decision turns on credibility and that the record therefore might also support the contrary result. But because the record provides substantial support for the ULJ’s findings, and because the ULJ explained why he believed McCarthy and disbelieved Escobedo, we leave the findings intact.

The ULJ further concluded that Escobedo quit without a good reason caused by St. Paul Cardiology, and that she was therefore not entitled to unemployment benefits. Escobedo does not dispute the conclusion that she quit without good reason, except to argue that she did not quit at all. We therefore do not review the ULJ’s determination that Escobedo’s quit was not for good reason caused by her employer. We affirm the ULJ’s determination that Escobedo is ineligible from receiving unemployment benefits.

## II

Escobedo argues that the ULJ conducted the eligibility hearing unfairly. She contends that she did not understand how to cross-examine witnesses, that she was not asked to give closing comments, and that the ULJ did not “hear or understand” her. Escobedo had an opportunity to challenge the handling of the proceeding when she requested that the ULJ reconsider his decision, and she did not. Escobedo’s request for reconsideration challenged only the ULJ’s decisions regarding the substance of her case. Having presented no fairness argument first to the ULJ, who would have then addressed her complaints contemporaneously, we do not consider her arguments on appeal. *Cf. Big*

*Lake Ass’n v. Saint Louis County Planning Comm’n*, 761 N.W.2d 487, 491–92 (Minn. 2009) (finding argument waived in administrative appeal when not raised in administrative proceeding with “sufficient specificity to provide fair notice of the nature of the challenge”); *Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 66 (Minn. App. 2008) (holding that arguments raised for the first time in a motion to a ULJ for reconsideration may be considered by this court), *review granted* (Minn. June 18, 2008) *and order granting review vacated* (Minn. July 6, 2009). We observe also that the arguments are not persuasive and would not warrant reversal.

**Affirmed.**