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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1606**

Masterson Personnel Inc.,
Relator,

vs.

Kristin Kastner,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 11, 2009
Reversed
Minge, Judge**

Department of Employment and Economic Development
File No. 20355656-2

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Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

MINGE, Judge

Relator, a temporary employment agency (staffing service employer), challenges the decision by an unemployment law judge (ULJ) that when an employee leaves a temporary job assignment with an employer to accept a full-time permanent position, the employee is considered to be discharged and therefore future unemployment benefits paid to the employee are used in calculating the staffing service employer's future tax rate. We reverse.

FACTS

On April 23, 2007, Masterson Personnel Inc. (Masterson) placed respondent Kristin Kastner as a receptionist assistant with Uroplasty Inc. on a "temp-to-hire" basis. On August 10, 2007, a Uroplasty supervisor notified Masterson that Kastner was being hired permanently by Uroplasty. After being placed on Uroplasty's payroll, Kastner had no further contact with Masterson.

In November 2007, Kastner's employment with Uroplasty ended. Kastner applied for and was granted unemployment-compensation benefits. Initially the Minnesota Department of Employment and Economic Development (DEED) determined that Kastner was effectively discharged by Masterson for reasons other than employment misconduct when Uroplasty hired her and therefore any unemployment benefits paid to Kastner could be used in computing Masterson's future unemployment tax rate. Masterson appealed and the ULJ affirmed the DEED determination. The ULJ concluded that "Kastner was not discharged from her temporary position at Masterson Personnel

due to any employment misconduct. Rather, Kastner’s temporary position ended when she was hired as a permanent employee of Uroplasty Inc.”

Masterson filed a request for reconsideration of the ULJ decision. The ULJ denied the request stating: “It is the position of [DEED] that when a temporary employee is hired on directly by an assignment employer, the employee is considered to have been ‘discharged’ by the staffing service employer.” This certiorari appeal follows.

D E C I S I O N

This court reviews a ULJ’s decision regarding benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law, or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). The ULJ’s factual findings are viewed in the light most favorable to the decision being reviewed. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). The ultimate determination of eligibility for benefits is a question of law, which we review de novo. *Id.*

I.

The first issue is whether the ULJ erred in determining that Kastner was “discharged” by Masterson for reasons other than misconduct¹. A discharge occurs “when any words or actions by an employer would lead a reasonable employee to believe

¹ The legislature has amended the definition of “quit” to address the situation present in this case. 2009 Minn. Laws ch. 78, art. 3, § 12. Under the new law, if “within five calendar days after completion of a suitable temporary job assignment from a staffing service employer . . . [the employee] accepts employment with the client of the staffing service, [the employee] is considered to have quit employment with the staffing service.” *Id.*

that the employer will no longer allow the employee to work for the employer *in any capacity*.” Minn. Stat. § 268.095, subd. 5(a) (Supp. 2007) (emphasis added).

In this case, the ULJ held that Kastner was discharged because: “Once Uroplasty Inc. offered Kastner a permanent position, Kastner no longer had the option of continuing to work *at that position* as an employee of Masterson Personnel.” The ULJ made no finding that Masterson made clear that Kastner could not work for Masterson “in any capacity” and the record does not contain evidence to support such a finding.

The ULJ explicitly stated that its decision was based on the “position of [DEED] that when a temporary employee is hired on directly by an assignment employer, the employee is considered to have been ‘discharged’ by the staffing service employer.” Respondent DEED argues that all parties intended that Kastner would be hired directly by Uroplasty, and that DEED’s temp-to-hire policy, although not grounded in statutory language, is consistent with the supreme court’s decision in *Sajevic v. Greenbrier Home, Inc.*, 298 Minn. 574, 575, 216 N.W.2d 864, 865 (1974). In *Sajevic*, an employer informed its employees that they would all be working for a different corporation from a specific day onward, and the court held that the claimants did not voluntarily quit the previous corporation’s employment. *Id.* at 576, 216 N.W.2d 866. However, in *Sajevic* there was evidence in the record that the employees believed that they had no reasonable choice but to accept the transfer to the new corporation. *Id.* Unlike *Sajevic*, the record here does not support a conclusion that Masterson’s words or actions indicated to Kastner that she could not continue working with Masterson in the same position or in an alternative temporary assignment, or that she had to accept the offer of permanent

employment with Uroplasty. Because this record does not support the ULJ's conclusion that Kastner was discharged, we reverse.

II.

The second issue is whether the benefits paid to Kastner should be used to calculate Masterson's future unemployment tax rate. Under Minnesota law "[u]nemployment benefits paid to an applicant, including extended and shared work benefits, will be used in computing the future tax rate of a taxpaying base period employer" Minn. Stat. § 268.047, subd. 1 (Supp. 2007). But "[u]nemployment benefits paid will not be used in computing the future tax rate of a taxpaying base period employer when . . . the applicant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer." Minn. Stat. § 268.047, subd. 3(2) (Supp. 2007).

Because we conclude the ULJ erred in its determination that Kastner was discharged from her employment with Masterson, the benefits paid to Kastner may not be used in computing the future tax rate of Masterson.

III.

The final issue is whether the ULJ sufficiently developed the record. Because we reverse, we do not reach this issue.

Reversed.

Dated: