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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1946**

Karen Lucas,  
Relator,

vs.

Qwest Corp,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed October 6, 2009  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 260811

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

## **UNPUBLISHED OPINION**

**PETERSON, Judge**

In this certiorari appeal from a decision of an unemployment-law judge (ULJ) that relator is ineligible to receive unemployment benefits because she voluntarily quit her employment, relator argues that she did not voluntarily quit her employment when she refused to retake an aptitude test. We affirm.

### **FACTS**

In January 2004, respondent-employer Qwest Corp. hired relator Karen Lucas for a temporary position as a digitizer. Although relator was originally told that the position would last for either six months or one year, her employment lasted longer.

In the fall of 2006, relator's supervisor told her that the digitizer position would be eliminated at the end of the year. In the same conversation, relator was offered an "upgraded" position that paid an additional \$50 per week. To obtain the new position, relator needed to pass an aptitude test. Relator was told that her employment would terminate at the end of the year if she either chose not to take the new position or did not pass the aptitude test.

Relator took the aptitude test in October 2006, but did not pass. As a result, relator believed that she would be laid off at the end of the year. But in January 2007, relator's supervisor told her that she would be scheduled for a retest in April. However, no further arrangements were made for relator to take the test. When relator was next contacted in June 2007 about a retest, she told her supervisor that she had decided not to retest. Relator had worked in close proximity to other former digitizers who had moved

on to the new position, and she saw that it was “totally different” and “way more difficult” than her current position, and she believed that she did not have the ability to perform the duties it required. Relator was told that her last day of work would be July 13, 2007.

Respondent Department of Employment and Economic Development (DEED) initially determined that relator was eligible for benefits. Qwest appealed, and following a hearing before a ULJ, the ULJ determined that relator had been discharged for employment misconduct because she refused to comply with Qwest’s request to retake the aptitude test. Relator requested reconsideration, but, due to an internal error when DEED switched to a new computer system, her request was never processed, and the file was destroyed. As a result, DEED ordered a new hearing to be held, with the first decision to be set aside after the ULJ issued a new decision. Following the second hearing, the ULJ found that relator had voluntarily quit because she “could have remained on in her job and tried to retake the test but she chose not to.” Relator again requested reconsideration, and the ULJ affirmed the finding that relator quit. This certiorari appeal followed.

## **DECISION**

Relator challenges the ULJ’s determination that she is ineligible for unemployment benefits because she voluntarily quit employment. On certiorari appeal from the denial of unemployment benefits, we review the ULJ’s decision to determine whether

the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006). A determination that an employee voluntarily quit is a finding of fact, which we will not disturb if it is substantially supported by the evidence. *Nichols v. Reliant Eng'g & Mfg.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

A person who voluntarily quits employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2006). Whether an employee has voluntarily quit depends on whether the employee “exercises a free-will choice to leave the employment.” *Shanahan v. Dist. Mem'l Hosp.*, 495 N.W.2d 894, 896 (Minn. App. 1993). If, when the employment ended, “the decision to end the employment was . . . the employee’s,” then the employee is considered to have quit. Minn. Stat. § 268.095, subd. 2(a) (2008).

Qwest made the decision to eliminate relator’s position as a digitizer. Relator had no choice in that matter. The issue here, however, is whether relator’s free-will choice to not take the aptitude test amounted to a “decision to end the employment” within the meaning of Minn. Stat. § 268.095, subd. 2(a).

We conclude that our decision in this case is controlled by this court’s decision in *Shanahan*. In *Shanahan*, the employer decided to eliminate the employee’s position, but

the employee's supervisor asked her to interview for an equivalent position. 495 N.W.2d at 895-97. The employee refused, and this court affirmed the ULJ's finding that the employee had voluntarily quit, reasoning:

Although there was no guarantee that [the employee] would have received the new position, the fact that she refused to interview supports a finding of voluntary termination. The [employer] terminated [the employee's] position but it did not terminate [the employee]. Had [the employee] interviewed for the new position and not received it, then her termination would have been involuntary. The evidence shows, however, that [the employee] voluntarily quit without pursuing the opportunity for continued employment with the [employer].

*Id.* at 897. As in *Shanahan*, Qwest terminated relator's digitizer position, but it did not terminate relator's employment. Had relator retaken the aptitude test and not passed and Qwest declined to provide her with another opportunity to retest, her termination would have been involuntary. Although there was no guarantee that relator would have passed, the fact that she refused to take the test supports a finding that she voluntarily quit by failing to pursue the opportunity for continued employment with Qwest.<sup>1</sup>

**Affirmed.**

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<sup>1</sup> Appellant also argues that the ULJ erred when it determined that refusing to take the test constituted employment misconduct. Because we conclude that relator voluntarily quit, it is not necessary for us to address that issue.