

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-854**

Emily Brown,  
Relator,

vs.

Milo R Holderbecker Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed March 9, 2010  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 21705947-3

Emily J. Brown, Bemidji, Minnesota (pro se relator)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department)

Milo R. Holderbecker, Inc., Bemidji, Minnesota (respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright,  
Judge.

## **UNPUBLISHED OPINION**

**ROSS, Judge**

Relator Emily Brown appeals from an unemployment law judge's determination that she is ineligible to receive unemployment benefits. We must decide whether the unemployment law judge properly concluded that Brown "quit" her employment when she said "I quit" during a heated exchange with her supervisor. Brown argues that she only meant to "quit" the argument and not her employment. The unemployment law judge found this explanation incredible. Because the unemployment law judge reasonably rejected Brown's explanation as not credible, substantial evidence supports the determination that Brown quit her employment and we affirm.

### **FACTS**

Emily Brown worked at Milo R. Holderbecker, Inc., doing business as Burger King, from July to December 2008. Brown went to the emergency room in late November. A doctor diagnosed her with a bladder infection and sciatica, recommended that she rest and not return to work for a week, and informed her that she was pregnant. Brown returned to work a week later on November 30 and informed her general manager, Rachel Yierbich, that she was pregnant. On December 1, Brown called 30 minutes before the start of her shift and declared that she would miss work because of illness. Burger King requires employees calling in sick to give at least four hours' notice and to find a substitute worker. Brown returned to work on December 2 but informed Yierbich that she had to leave two hours early for a doctor's appointment.

Yierbich reprimanded Brown for being unable to complete her shift and for giving inadequate notice of her absence the previous day. She questioned Brown's reliability and threatened to reduce her hours. Yierbich later asserted that Brown became insubordinate and angry. Brown walked out of the room and yelled, "I quit!" She called Yierbich a "b-tch" and told her that she was "going to hell." Yierbich asked Brown to leave.

The Department of Employment and Economic Development (DEED) at first determined that Burger King discharged Brown because of a medical condition, illness, or injury, and that she was therefore eligible for unemployment benefits. Burger King appealed from the determination. During her evidentiary hearing, Brown testified that after Yierbich told her that she was unreliable, Yierbich also stated that it was not going to work out and that Brown could just leave. Brown claims that she left the room and tried to call for a ride home but that Yierbich followed her and continued to tell her to get out. Brown testified that she responded, "[F]ine, I quit," but she claims that she actually said, "I quit *arguing*," not that she quit her job. Yierbich told her to leave the building many times, and Brown contends that she interpreted this to mean that she was being fired. After the hearing, the unemployment law judge (ULJ) found that Brown quit her employment for reasons not caused by her employer and held that she was ineligible for unemployment benefits. Brown unsuccessfully sought reconsideration, and she now appeals by certiorari.

## DECISION

Brown challenges the ULJ's determination. We may reverse or modify a ULJ's decision if a relator's rights were prejudiced because the ULJ's findings, inferences, conclusion, or decision is, among other grounds, unsupported by substantial evidence in the record submitted, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). An applicant who quits her employment is ineligible for unemployment benefits unless one of nine statutory exceptions applies. Minn. Stat. § 268.095, subd. 1 (2008). Brown argues that she was discharged, challenging the ULJ's finding that she quit. Whether an employee quit or was discharged is a question of fact for the ULJ. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). This court considers factual findings in the light most favorable to the ULJ's decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "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). We also defer to the ULJ's determinations on credibility and conflicting testimony. *Nichols*, 720 N.W.2d at 594.

A "quit" occurs when the employee makes the decision to end employment. Minn. Stat. § 268.095, subd. 2(a) (2008). 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) (2008). We hold that substantial evidence supports the ULJ's finding that Brown quit her employment. It is undisputed

that Brown said, “I quit.” Whether she intended those words to mean that she quit the argument or that she quit her job hangs on a credibility determination. The ULJ disbelieved Brown’s testimony that she meant merely to “quit” the conversation.

“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2008). The ULJ explained that he disbelieved Brown’s testimony because Brown’s ending the confrontation by walking away without involving the store owner is inconsistent with her history with Yierbich. In Brown’s previous employment difficulties with Yierbich, Brown had raised her concerns with the store owner, who took steps to address them. Brown did not bring this conflict with Yierbich to the owner’s attention, and her declaration that she “quit,” along with her profane remarks to Yierbich, therefore more likely reflected her intent to end her employment. Because the ULJ sufficiently explained why he rejected Brown’s testimony, we defer to his credibility determination. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532–33 (Minn. App. 2007) (deferring to ULJ’s credibility determination after finding that ULJ provided statutorily required reason for disbelieving relator’s testimony).

Yierbich’s testimony corroborates the finding that Brown quit. Yierbich testified that she did not tell Brown that she was or would be fired, only that she had to be more reliable. This testimony supports a conclusion that “the decision to end the employment

was, at the time the employment ended,” Brown’s. *See* Minn. Stat. § 268.095, subd. 2(a).

We will not disturb the ULJ’s well-supported findings and we affirm his decision.

**Affirmed.**