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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-938**

Ann Shepard,  
Relator,

vs.

CMG Mortgage Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

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

Department of Employment and Economic Development  
File No. 21625825-3

Ann Shepard, Estero, Florida (pro se relator)

CMG Mortgage Inc., San Ramon, California (respondent employer)

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

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and  
Shumaker, Judge.

## **UNPUBLISHED OPINION**

**PETERSON, Judge**

In this certiorari appeal, relator challenges the decision by an unemployment-law judge that she is ineligible to receive unemployment compensation benefits because she quit her employment without a good reason caused by the employer. We affirm.

### **FACTS**

Relator Ann M. Shepard was employed as an account executive for respondent CMG Mortgage Inc. from October 22, 2007, through April 29, 2008. From the time relator was hired by CMG, she was paid on a straight commission basis and did not earn a base salary. After 90 days of employment, relator became eligible for and received employee benefits. Relator did not earn any commissions during her first four months of employment with CMG. On March 11, 2008, CMG branch manager Lance Ebarb told relator that she would be discharged if she did not begin producing business. Relator later initiated two loans through a trade show but had difficulty processing them due to CMG's failure to communicate with her and was able to close on only one of the loans.

Relator worked with Josh Shold, the only other CMG account executive located in Minnesota. After Shold left CMG on April 1, 2008, his accounts were transferred to an employee located in California. Relator testified that she believed CMG was "done with me" based on CMG's failure to transfer Shold's accounts to her, the warning she received from Ebarb in March, and her supervisor's failure to return telephone calls or e-mails for almost a month. On April 28, 2008, relator sent her supervisor an e-mail saying that she needed to resign from her position with CMG. In the e-mail, relator thanked CMG and

said that she was resigning with “deep regret.” She listed difficulties with brokers and distractions, including a child-custody dispute, as the reasons for her resignation.

Relator filed a claim for unemployment benefits with respondent Department of Employment and Economic Development. A department adjudicator determined that relator quit employment without a good reason caused by her employer and, therefore, she was ineligible for unemployment benefits. Relator appealed to an unemployment-law judge (ULJ). Following an evidentiary hearing, the ULJ determined that relator voluntarily quit employment without a good reason caused by her employer and, therefore, was ineligible for unemployment benefits. Relator filed a request for reconsideration. The ULJ affirmed the initial decision. This certiorari appeal followed.

### **DECISION**

This court may affirm the ULJ’s decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights “may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law,” “unsupported by substantial evidence in view of the entire record as submitted,” or “arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2008).

Subject to certain exceptions, an applicant who quits employment is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2007). One exception applies when an applicant quit employment for a good reason caused by the employer. *Id.*, subd. 1(1).

(a) A good reason caused by the employer for quitting  
is a reason:

(1) that is directly related to the employment and for which the employer is responsible;  
(2) that is adverse to the worker; and  
(3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

Minn. Stat. § 268.095, subd. 3 (2006).

The reason why an individual quit employment is a fact question for the ULJ to determine. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). “We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). Whether an applicant had a good reason to quit caused by the employer is a legal question, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

The ULJ found:

[Relator] contends that CMG failed to communicate with her and neglected to help her obtain business. However, [relator] worked for CMG for over five months without complaint. She’s presented no evidence of any obligation violated by CMG. In fact, [relator] admits that it was a very bad time to

be in the mortgage industry, which was changing drastically. The evidence indicates that [relator] quit because she knew she was going to be fired. While she accepted the straight commission position, she hadn't earned any income for months and simply couldn't afford to remain in the position any longer. These may be good personal reasons for quitting, but they weren't caused by CMG.

In her appellate brief, relator addresses three reasons why she quit. The first reason is the lack of communication between relator and CMG. Relator asserts that she did not receive direct communication from Ebarb after the March 11, 2008, conference call, during which Ebarb told her that she would be discharged if she did not begin producing business. Even if there was a lack of communication from CMG, substantial evidence supports the ULJ's finding that relator did not complain to CMG. Minn. Stat. § 268.095, subd. 3, requires that an employee who was subjected to adverse working conditions by the employer "complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." Regarding the two loans that relator initiated at the trade show, there is no evidence in the record that relator complained to CMG that its failure to communicate with relator caused her difficulty in processing those loans.

The second reason for quitting that relator addresses is the assignment of Shold's accounts to an account executive in California. But there is no evidence in the record that indicates that CMG made a promise or had a contractual obligation to assign those accounts to relator. CMG's failure to provide a benefit to relator that CMG was not obligated to provide is not a good reason to quit. Relator also argues on appeal that

CMG's failure to assign her Shold's accounts was effectively a termination. But relator did not raise this issue before the ULJ, and, therefore, we will not consider the issue. *Imprint Techs., Inc. v. Comm'r of Econ. Sec.*, 535 N.W.2d 372, 378-79 (Minn. App. 1995).

The third reason for quitting that relator addresses is that she could not afford to continue in the position because she was incurring job-related expenses, including daycare, telephone, computer, and vehicle costs, without receiving any income. The fact that relator's employment expenses exceeded her income from the employment may have been a good reason for relator to quit the employment, but the record does not demonstrate that it was a reason for which CMG was responsible. Furthermore, relator admitted that market conditions and a change in Minnesota law, not CMG's actions, were to blame for her inability to generate additional business.

Relator argues that "[t]his case was brought before the Unemployment Law Judge to determine if my decision to quit CMG Mortgage was justified." The issue, however, is not whether relator's decision to quit was justified but whether relator quit for a good reason caused by CMG. The ULJ did not err in determining that relator quit her employment without a good reason caused by the employer and, therefore, relator is ineligible to receive unemployment benefits.

**Affirmed.**