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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1126**

Debbie Ferrara,  
Relator,

vs.

Mortgage Planners Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 6, 2010  
Affirmed  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 22118952-4

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Debra R. Ferrara, Minneapolis, Minnesota (pro se relator)

Mortgage Planners Inc., Stillwater, Minnesota (respondent)

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

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Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

## **U N P U B L I S H E D   O P I N I O N**

**LANSING, Judge**

In this certiorari appeal from the denial of unemployment benefits, Debbie Ferrara challenges the determination that her reasons for quitting did not constitute a good reason caused by her employer. Because the validity of Ferrara's reasons turns on conflicting testimony of whether the employer provided Ferrara with the resources necessary to perform her work, and the unemployment law judge expressly accepted the employer's testimony on the necessary provision of resources, we affirm.

### **F A C T S**

Debbie Ferrara began working for Mortgage Planners, Inc., as a loan officer in October 2008. Ferrara agreed that she would be compensated solely by a commission of fifty percent of the origination or broker fee for each loan that she closed. By February 2009 she had closed only one loan. Ferrara attributed her lack of productivity to Mortgage Planners' failure to provide her with specific resources to do her work, and she resigned in late February.

Following the denial of her application for unemployment-compensation benefits, Ferrara appealed and an unemployment law judge (ULJ) conducted an evidentiary hearing. Ferrara and Jim Ober, the owner of Mortgage Planners, both testified. In her testimony, Ferrara described how her ability to work as a loan officer was impeded by Mortgage Planners' failure to provide her with a computer, a phone line, a lenders' list, appropriate software, private office space, the ability to initiate credit reports, and regular meetings for support and training. Ober, in his testimony, stated that Mortgage Planners

had not agreed to provide some of the resources and that Ferrara had failed to use the other resources that she listed.

The ULJ resolved the conflicting testimony by an explicit finding that Ober's description of the agreement was more credible. In support of this finding, the ULJ set forth reasons for the credibility determination. The ULJ concluded that Mortgage Planners did not breach the employment agreement or treat Ferrara unreasonably and determined that she was ineligible for benefits.

Ferrara requested reconsideration and submitted a letter from another mortgage company stating that it was standard practice in the loan-origination industry for an employer to provide commission-based employees with some of the listed resources. The ULJ reaffirmed Ferrara's ineligibility based on the conclusion that she had not shown good cause for failing to provide the letter at the evidentiary hearing and that the record supported the ULJ's earlier determination. By writ of certiorari, Ferrara appeals.

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

We review the denial of unemployment benefits to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008) (providing bases on which this court may reverse or modify ULJ's decision).

An employee who quits her employment is ineligible for unemployment compensation benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2008). “[A] good reason [to quit] caused by the employer” is an exception to

ineligibility. *Id.*, subd. 1(1). The determination that an employee quit without good reason caused by the employer is a legal conclusion that we review de novo. *See Zepp v. Arthur Treacher Fish & Chips, Inc.*, 272 N.W.2d 262, 263 (Minn. 1978) (characterizing decision as conclusion of law); *see also Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (exercising independent judgment on issue of law).

Ferrara contends that she was justified in quitting her employment because Mortgage Planners failed to provide job resources that were either explicitly promised to her or were necessary for her work. The statute defines “good reason caused by the employer” as a reason that is “adverse to the worker,” that is “directly related to the employment, and for which the employer is responsible” and that would “compel an average, reasonable worker to quit and become unemployed.” Minn. Stat. § 268.095, subd. 3(a) (2008). An employer’s breach of an employment agreement with the employee may constitute good cause for the employee to quit. *Krantz v. Loxtercamp Transp., Inc.*, 410 N.W.2d 24, 26 (Minn. App. 1987). Whether Ferrara’s employment agreement was breached turns on the conflicting testimony presented at the evidentiary hearing. Our review defers to the ULJ’s assessment of credibility and the resolution of conflicting testimony. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); *see also* Minn. Stat. § 268.105, subd. 7(d) (stating court of appeals may reverse decision of ULJ if findings are unsupported by substantial evidence).

In her testimony, Ferrara stated that Mortgage Planners agreed to provide a computer and software to process loan applications and to manage a database of clients, but it did not comply with its agreement. Instead, Ober told Ferrara that she should take

loan applications on paper, which Ferrara considered an inadequate alternative. Ferrara also testified that she was denied use of meeting rooms, did not receive promised training and support, and that Mortgage Planners denied her access to credit reports and lender lists that were necessary to perform her job.

Ober testified that Ferrara had her own computer when she was hired. He stated that he made it clear that Mortgage Planners would not invest in a computer for her until she demonstrated the potential to generate clients and that she had only completed one loan in four months. He disputed Ferrara's claim that paper applications are inadequate and stated that he regularly uses paper applications. Ober denied that Ferrara was refused access to loan software and lenders, but said that Ferrara's problems with her computer prevented her from downloading Mortgage Planners' software or contacting lenders electronically. He also said that she had access to lender lists through resources at the office. He denied that he had promised Ferrara direct access to credit bureaus and explained that all of his loan officers must submit requests through him because he is accountable for audits of credit-report requests. Finally, Ober disputed Ferrara's testimony that she was denied access for a client meeting or that Mortgage Planners failed to provide support and training. Ober testified that Mortgage Planners held staff meetings two or three times a month and said in a written statement that Ferrara had received training but did not appear to benefit from it.

Based on credibility determinations, the ULJ found that Ferrara agreed to use her own computer; that Mortgage Planners made software and lender lists available; that access to credit bureaus was available through Ober; that Mortgage Planners had not

promised to provide a workstation for Ferrara, but had provided all other necessary resources.

When the credibility of a witness in the evidentiary hearing significantly affects the outcome of the ULJ's decision, the ULJ "must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2008). In compliance with this provision, the ULJ stated in the findings that Ferrara was not as persuasive as Ober or as responsive to questions and that her description of events was not as likely as Ober's description. These statements sufficiently set out the ULJ's reasons for crediting Ober over Ferrara, and we are required to defer to the ULJ's assessment.

Ferrara also challenges the ULJ's failure to consider further evidence submitted with her request for reconsideration. The ULJ is charged with ordering an additional evidentiary hearing if the evidence would likely change the decision's outcome and good cause exists for not previously submitting the evidence. Minn. Stat. § 268.105, subd. 2(c) (2008). Even without a showing of good cause, consideration of new evidence is required if it shows that evidence at the initial hearing was likely false and affected the outcome. *Id.* We evaluate a ULJ's denial of a request for an additional evidentiary hearing under an abuse-of-discretion standard. *Skarhus*, 721 N.W.2d at 345; *see also Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d 28, 30 (Minn. App. 1994) (deferring to commissioner's discretion not to hold additional hearing).

Ferrara attempted to supplement the hearing record by providing a letter from her new employer about the resources that loan-origination companies typically provide their employees. The ULJ concluded that Ferrara did not demonstrate good cause for failing

to provide the letter at the hearing. This conclusion is supported by the record. Ferrara worked for the new employer at the time of the hearing, knew that resources offered were the central issue, and referred several times to her new employer's opinion. These circumstances establish that the letter could have been offered at the hearing. She offered no explanation for not having provided the letter at the initial hearing, and the ULJ reasonably found she did not have good cause for the late submission.

In addition, the submission does not undermine the testimony on which the ULJ based the determination. The letter stated that it is standard in the industry for a loan-origination company to provide loan officers with "lender lists, an ability to independently pull credit reports, access to a computer and mortgage software, office space, office copiers/scanners, and office supplies." Ober testified about the majority of these resources, and said that they were available to Ferrara with the exception of a computer. One of the main questions at the hearing was whether Mortgage Planners had agreed to provide one. The ULJ, based on evidence and credibility determinations, found that Mortgage Planners had not agreed to provide Ferrara with a computer, and the content of the late-submitted letter does not address the terms of the employment agreement. It was not an abuse of discretion for the ULJ to decline to reconsider the decision on ineligibility.

**Affirmed.**