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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1287**

Ann Stresnak, Relator,

vs.

Dakota Valley Oral & Maxillofacial Surgery PA,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed June 8, 2010
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 22101053-3

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(for relator)

Dakota Valley Oral & Maxillofacial Surgery, Eagan, Minnesota (respondent employer)

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

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

STAUBER , Judge

On appeal from the decision by the unemployment law judge (ULJ) that she was
not eligible to receive unemployment benefits, relator argues that she did not quit

employment and instead was discharged, and that if she did quit, it was for a good reason caused by the employer. We affirm.

FACTS

Respondent Dakota Valley Oral Surgery had offices in Lakeville and in Eagan. Relator Ann Stresnak and another employee worked as receptionists at the Lakeville office. During the week of February 23, 2009, relator's supervisor told her and the other Lakeville receptionist that due to personnel changes, one of them would have to be transferred to the Eagan office. Although the other receptionist volunteered to take the transfer and relator did not want to be transferred, the employer decided that for business reasons, relator should be transferred and the other receptionist should remain at the Lakeville office.

Accordingly, on Thursday, February 26, the supervisor told relator that she would be transferred to the Eagan office the following Monday. Relator called in sick on Friday morning, but in the afternoon, she called her supervisor and explained that she was uncomfortable with the transfer occurring on Monday because the supervisor would be on vacation that week. The supervisor told relator that in that case, she could take a week of vacation and start a week from Monday, when the supervisor would also be back at work.

Relator, however, continued the discussion and said that she would not quit her job in Lakeville. The supervisor told relator that there was no job for her in the Lakeville office but that she could continue her job in the Eagan office, and that if she was

unwilling to accept the transfer and work in the Eagan office, her employment was over. Relator did not return to work.

Relator applied for unemployment benefits but received a determination of ineligibility. She appealed and, after a hearing, the ULJ ruled that she was ineligible for benefits because she quit employment without good reason caused by the employer. She requested reconsideration, the ULJ affirmed, and this certiorari appeal followed.

D E C I S I O N

This court may affirm, remand for further proceedings, or reverse or modify the decision if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2008). Substantial evidence means "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). Findings of fact are reviewed in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will defer to the credibility determinations of the ULJ and will sustain the ULJ's findings if they are substantially supported by the evidence. *Id.* Questions of law are reviewed de novo. *Id.*

Relator first challenges the ULJ's finding that she quit employment, arguing that the employer discharged her. An applicant who is discharged is eligible for

unemployment benefits unless the discharge was for misconduct. Minn. Stat. § 268.095, subd. 4(1) (2008). The determination of whether an employee quit or was discharged is a fact question. *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985).

An employee quits her job “when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2008).

An employee is discharged “when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” Minn. Stat. § 268.095, subd. 5(a) (2008).

Relator argues that the finding that she quit is erroneous because there is no evidence in the record that she ever outright rejected Dakota Valley’s offer of a position in the Eagan office, and instead, her supervisor told her she was being terminated. Relator testified that she refused to quit her Lakeville office position and her supervisor told her she no longer had a position for her there; she then asked her supervisor if she was being terminated, and the supervisor responded, “yes.” The supervisor testified that she responded to relator’s question by telling her she could continue to work for Dakota Valley in the Eagan office, but that if she was unwilling to work in the Eagan office, then her employment was over.

The ULJ found that Dakota Valley did not discharge relator and that relator quit the job when she chose to end her employment rather than work in the Eagan office. In making these findings, the ULJ addressed the comparative credibility of the witnesses and explained that he found that the supervisor’s answers to the questions were more responsive and described a more likely chain of events than relator’s answers and that the

supervisor was a more persuasive witness than relator. Because we defer to credibility determinations by the ULJ and because substantial evidence in the record supports the ULJ's findings that relator quit when continuing employment was available to her and that she was not discharged, we affirm.

Relator also asserts that she was not given enough time to decide whether to accept the transfer. She contends that when she asked for more time, her supervisor told her she could take a week of vacation and delay starting work in the Eagan office until the supervisor was back from vacation; relator claims that she could not afford to do so because her vacation would have been unpaid. First, relator did not assert to the ULJ that she had insufficient time to make the decision and instead, her primary argument was that the transfer was a breach of her employment contract. Generally, this court will not address issues not presented to and considered by the decisionmaker. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Further, at the hearing, the ULJ advised the parties that the issue of paid time off would not affect his decision and he made no finding on the issue. This court will not address a disputed factual issue that the ULJ did not resolve and one which he found irrelevant to the merits of the decision.

II.

Next, relator argues that even assuming she quit, it was for good reason caused by the employer because the employer breached its promise to her that she would work at the Lakeville office. An applicant who quits employment is ineligible to receive unemployment benefits, unless the quit, in relevant part, was for good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (2008). An employee quits for good

reason caused by the employer when there “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.” Minn. Stat. § 268.095, subd. 3(a) (2008). “Good cause to quit is generally found where an employer has breached the terms of an employment agreement.” *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 553 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Sept. 24, 2003).

Relator contends that she had good cause to quit because the employer agreed that she would work at the Lakeville office and then breached the agreement by transferring her to the Eagan office. She cites the letter in which Dakota Valley offered her the job that stated the position would be one “primarily working out of the Lakeville office.” Relator’s argument is belied by other statements in the letter, namely that the letter was not intended to create any contract of employment, that employment would be at-will with no contract of employment or guarantee of benefits, and that only the president of Dakota Valley had the authority to provide particular terms of employment or agreement. The ULJ’s finding that relator’s transfer from the Lakeville to the Eagan office was not a breach of the employment contract is supported by substantial evidence in the record.

The ULJ also found that Dakota Valley had a right to reassign workers to suit the needs of its business and that the transfer would not compel the average reasonable employee to quit and become unemployed rather than accept the transfer. This court has held that an employee did not have good reason to quit where she was being transferred for continued employment to a nearby location and her concerns about adverse

consequences were based on speculation. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 802 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). The ULJ's determination that relator did not have good reason to quit caused by the employer based on the transfer is supported by substantial evidence in the record.

III.

Finally, relator argues that the ULJ failed to satisfy his duty to fully and adequately develop the record in support of relator's position. The ULJ has the duty to ensure that all relevant facts are clearly and fully developed. Minn. Stat. § 268.105, subd. 1(b) (2008). "The judge should assist unrepresented parties in the presentation of evidence." Minn. R. 3310.2921 (2007).

Relator argues that the ULJ failed to develop the record regarding her claim that Dakota Valley breached her employment contract because he did not question the employer's witnesses regarding the claim and that the matter should be remanded for an additional evidentiary hearing. However, the employer introduced into evidence the job-offer letter upon which relator relies. Further, the supervisor testified that while the job offer to relator was primarily for a position at the Lakeville office, the offer did not state it was exclusively for a position there. She also explained that it was not uncommon for staff to be moved to different offices based on business needs. Relator has not demonstrated that the ULJ failed to develop the record properly.

Affirmed.