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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-258**

Connie Marsh,  
Relator,

vs.

Dungarvin Minnesota, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed December 19, 2011**

**Affirmed**

**Huspeni, Judge\***

Department of Employment and Economic Development  
File No. 25710619-4

Connie Marsh, Ogema, Wisconsin (pro se relator)

Dungarvin Minnesota, LLC, St. Paul, Minnesota (respondent)

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

Considered and decided by Minge, Presiding Judge; Ross, Judge; and Huspeni,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**HUSPENI**, Judge

Relator Connie Marsh appeals, by writ of certiorari, an unemployment-law judge's decision that she is ineligible to receive unemployment-compensation benefits because she did not quit her employment for a good reason caused by her employer. We affirm.

### FACTS

From February 1996 through June 15, 2010, relator Connie Marsh worked as a program counselor at a group home for disabled adults run by Dungarvin Minnesota LLC. During her employment, Marsh worked 48-hour weekend shifts every other weekend that began at 10:00 p.m. on Fridays and ended at 9:30 p.m. on Sundays. In April 2009, Marsh moved to Wisconsin, increasing her commute to 175 miles each way.

During Marsh's employment at Dungarvin, the company introduced a new computer program. In April 2010, an employee's proficiency with the program became a condition of employment. The employees were notified that they would each be given two opportunities to take a test on their proficiency with the new program and if they failed both tests, they would be discharged. Marsh was scheduled to take the test for the first time on June 16, 2010.

While she was employed at Dungarvin, Marsh believed that her supervisor, Anne Marie Najjer, was harassing her. The record reflects several interactions between Marsh and Najjer. During the summer of 2009, after Marsh was one hour late to her shift, Najjer informed her that it was an expectation of her employment that she report to work on time. Although Marsh was expected to attend regular staff meetings, she often did not

attend the meetings because the length of her commute made attendance inconvenient for her. When Najjer told Marsh she was upset that Marsh was not attending the meetings, Marsh explained why, and Najjer changed the schedule so that the meetings were at a time convenient for Marsh. At one point, Najjer repeatedly followed up with Marsh to inquire whether she would be attending a training. And at a staff meeting in March 2010, when Marsh answered a question, Najjer told Marsh that she was “fired.” When Marsh later confronted Najjer about the comment, Najjer said that she was joking.

Although Marsh felt that Najjer was harassing her, she never complained to human resources or to any other supervisors. And despite being aware of Dungarvin’s grievance system for employees who have issues with their supervisors, Marsh did not file a grievance against Najjer.

On May 3, 2010, Marsh notified Dungarvin that she was quitting, effective June 15, 2010, the day before she was scheduled to take her first proficiency test on the new computer program. After Marsh gave her notice, but while she continued her employment, there were several instances in which her pay was inaccurate due to Marsh’s manner of entering her time into the system. After Marsh complained about the error, it was corrected, and she was properly paid for her time.

After quitting, Marsh applied for unemployment compensation, which was denied because she was found to have quit her employment and none of the statutory exceptions to ineligibility were applicable. She appealed from this decision, and an evidentiary hearing was held.

At the hearing Marsh argued that she had a good reason for quitting because (1) her commute was 175 miles each way; (2) she believed she would have been discharged for not passing a test on her proficiency with the new computer program; and (3) she believed Najjer was harassing her. Dungarvin offered testimony by the human resources manager and Najjer. Marsh testified on her own behalf but called no other witnesses.

The unemployment-law judge (ULJ) concluded that Marsh did not quit her employment for a good reason caused by the employer because (1) Marsh's commute was not caused by Dungarvin; (2) quitting in anticipation of being discharged is not a good reason for quitting caused by Dungarvin; and (3) Najjer was not harassing Marsh and Najjer's actions were not so adverse as to cause the average, reasonable worker to quit and become unemployed rather than remain in the employment. Marsh requested reconsideration, arguing that Najjer lied under oath and that the ULJ could verify Marsh's statements by contacting two individuals. In affirming the decision, the ULJ concluded that Marsh failed to raise any new issues and offered no explanation for her failure to call witnesses at the evidentiary hearing. Additionally, the ULJ noted that based on the information Marsh provided about statements the two individuals could offer, their testimony would not change the decision. This appeal followed.

## **DECISION**

We review a ULJ's ineligibility decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported

by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010).

An employee who quits employment is ineligible to receive unemployment-compensation benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). “[A] good reason [to quit] caused by the employer” is an exception to ineligibility. *Id.*, subd. 1(1). “A good reason caused by the employer” is a reason that “is directly related to the employment and for which the employer is responsible,” “is adverse to the worker,” and “would compel an average, reasonable worker to quit.” *Id.*, subd. 3(a)(1)-(3) (2010). We review the ULJ’s factual findings “in the light most favorable to the decision” and defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The determination that an employee quit without good reason caused by the employer is a legal conclusion, which we review de novo. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

On appeal, Marsh concedes that the length of her commute is not a good reason for quitting caused by the employer. She argues, however, that she quit her employment for two good reasons caused by the employer: her belief that she would not have passed the proficiency test on the new computer program and would, therefore, have been discharged, and Najjer’s harassment of her.

The ULJ found that Marsh quit because she was having difficulty with Dungarvin’s new computer system and was afraid that she would be discharged for failing the test. The ULJ further found that Marsh quit before taking the test and had no

way of knowing whether she would fail the test the two times that she would have been permitted to take it. Marsh does not challenge any of the ULJ's findings on appeal.

The record reflects that at the time Marsh quit her employment, discharge was uncertain because she had not yet taken the test on proficiency with the new computer program, and whether she would have failed the test two times is unknown. Choosing to leave employment in anticipation of being discharged is not an exception to the general rule that an employee who quits is ineligible to receive unemployment benefits. *See* Minn. Stat. § 268.095, subd. 3 (2010) (defining good reason caused by employer and identifying exceptions). Even if discharge had been certain, quitting in anticipation of discharge is not a good reason for quitting caused by the employer. *See id.*, subd. 3(e) (stating that employer's notification of future discharge is not a good reason for quitting caused by the employer). And quitting in anticipation of discharge in order to protect one's employment record is not a good reason for quitting caused by the employer. *See Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 892 (Minn. App. 1984) (determining that employee who quit to avoid disciplinary action and discharge and prevent events from being on employment record voluntarily quit); *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-58 (Minn. App. 1983) (holding that employee who quit before formal discharge decision was final to protect employment record quit without good cause).

Marsh also argues that she quit because Najjer harassed her and points to several instances that she alleges constitute harassment: (1) Najjer threatened suspension or termination after she arrived late to a shift; (2) Najjer repeatedly called her to inquire

whether she was signed up to attend a training, (3) Najjer did not immediately notice payment errors that resulted in her pay being less than it should have been, and (4) after she answered a question in a staff meeting, Najjer said “you’re fired.”

The ULJ rejected Marsh’s allegations of harassment. After making detailed findings about Najjer’s behavior, the ULJ concluded that “Najjer was not harassing Marsh.” The ULJ specifically found that Najjer properly addressed concerns about Marsh’s tardiness and attendance at meetings. The ULJ stated that although Marsh “may have been annoyed by the repeated follow-ups” about her attendance at a staff meeting, it was not harassment, and Najjer’s failure to recognize payment errors at the time they occurred, “while bothersome,” was not harassment. Caselaw supports the ULJ’s findings; personality conflicts do not constitute a good reason to quit caused by the employer. *See Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985) (concluding that alleged harassment was properly viewed as a personality conflict).

The ULJ found credible Marsh’s assertion that Najjer lied when she denied telling Marsh that she was fired. Najjer’s improper denial is not controlling, however, on the question of whether Najjer’s conduct constituted harassment. The ULJ found that although Najjer’s comment “may have been unprofessional, Najjer did not intend to ‘fire’ Marsh as was made clear by her continuing the meeting and [that] she never made any effort to end Marsh’s employment.” And, the ULJ found that when Marsh confronted Najjer, Najjer said she was joking. Najjer’s behavior does not rise to the level of being so adverse as to cause the average, reasonable worker to quit and become unemployed rather than remain in the employment.

Even if a fact-finder were to determine that Najjer's actions rose to the level of harassment, Marsh did not complain to management or to human resources, nor did she file a grievance about the alleged harassment. Dungarvin, therefore, did not have a reasonable opportunity to address Marsh's concerns. *See* Minn. Stat. § 268.095, subd. 3(c) (stating that an employee 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").

Because Marsh has not demonstrated that she quit her employment for a good reason caused by the employer, we affirm the ULJ's determination that Marsh is ineligible to receive unemployment-compensation benefits.

**Affirmed.**