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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2157**

John Howitz,
Relator,

vs.

The International School of Minnesota, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 22, 2013
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 29878239-3

John Howitz, St. Paul, Minnesota (pro se relator)

The International School of Minnesota, LLC, Eden Prairie, Minnesota (respondent)

Lee B. Nelson, Colleen Timmer, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the determination by the unemployment-law judge (ULJ) that he is not eligible to receive unemployment benefits because he quit his employment for a reason not caused by his employer. We affirm.

FACTS

Relator John Howitz worked as the academic quality controller for respondent International School of Minnesota, LLC. In early June 2012, the International School received a parent complaint about a teacher. Howitz responded to the parent by e-mail but also inadvertently sent the response, which included the initial complaint, to the parents of all of the school's 10th- and 11th-grade students.

On the morning of June 8, Howitz discussed the situation with his supervisor Christi Seiple-Cole. Seiple-Cole told him that he committed "a very serious offense" but did not say that he would be terminated because of it. Seiple-Cole scheduled a meeting for 4:00 p.m. that day with Howitz and a human-resources representative to further discuss the incident.

At 1:34 p.m. that afternoon, Howitz sent Seiple-Cole an e-mail stating that he was going to leave unless the human-resources representative met with him immediately; his key was on his desk; and any paperwork could be sent to his home. The meeting time was not changed. Howitz left and never returned.

Howitz applied for unemployment benefits, asserting that he resigned after being told he would be terminated. Respondent Minnesota Department of Employment and Economic Development initially determined that Howitz was eligible to receive benefits. The International School appealed. The ULJ conducted an evidentiary hearing during which Seiple-Cole testified that she did not tell Howitz that he would be terminated. But she acknowledged that termination likely would have occurred during the 4:00 p.m. meeting with the human-resources representative. Howitz did not participate in the hearing. The ULJ found Seiple-Cole's testimony more credible than Howitz's written statement in his request for benefits that he resigned after being told he would be terminated and concluded that Howitz is not eligible for benefits because he quit and does not qualify for an exception under Minn. Stat. § 268.095, subd. 1 (2012). Howitz requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal follows.

D E C I S I O N

We review a ULJ's decision to determine whether it is “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2012).

An employee who quits employment is not eligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1. An employee quits employment “when the decision to end the employment was, at the time

the employment ended, the employee's.” *Id.*, subd. 2(a) (2012). Discharge from employment occurs “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.” *Id.*, subd. 5(a) (2012).

Whether an employee voluntarily quit or was discharged is a question of fact. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). We review factual findings in the light most favorable to the ULJ's decision and will not disturb findings that are substantially supported by the evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to the ULJ's determinations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp't Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

Howitz argues that he is entitled to unemployment benefits because the International School discharged him from employment. We disagree. Substantial evidence supports the ULJ's finding that Howitz quit his employment. Seiple-Cole testified that on June 8 she advised Howitz that he committed a serious error by sending his response to the parent's complaint to a broad group of parents. He responded by announcing that he would leave unless he had an immediate meeting with the human-resources representative, that his key was on his desk, and that any paperwork could be sent to his home. Upon receiving no response, Howitz left the school and did not return to work.¹ The ULJ determined that Seiple-Cole's testimony was more credible than

¹ Howitz asserts he sent an e-mail to Seiple-Cole on June 11, clarifying his departure on June 8. This e-mail was not submitted to the ULJ during the evidentiary hearing and is

Howitz's hearsay statement to the contrary. We defer to a ULJ's credibility determinations.

Howitz concedes on appeal that Seiple-Cole never told him he would be terminated. But he contends that because it was apparent to him that his termination would occur at the 4:00 p.m. meeting, he was, as a practical matter, discharged. We are not persuaded. An employee voluntarily quits if he chooses to leave employment rather than wait for an official determination of his employment status by the proper authority. *Bongiovanni v. Vanlor Invs.*, 370 N.W.2d 697, 699 (Minn. App. 1985); *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-58 (Minn. App. 1983); *see also* Minn. Stat. § 268.095, subd. 2(b) (2012) (“An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, is considered to have quit the employment.”). In *Ramirez*, relator resigned after his manager said that he would likely be discharged for repeatedly arriving late to work. 340 N.W.2d at 357. Despite relator's expectation that he would be terminated, we affirmed the ULJ's determination that the relator voluntarily quit because he chose to end his employment rather than wait for a formal decision as to discharge. *Id.* at 357-58. Likewise, Howitz chose to end his employment rather than wait to face possible termination. On this record, we conclude

outside the record on appeal. *See* Minn. Stat. § 268.105, subd. 2(c) (2012) (stating that when deciding a request for reconsideration, the ULJ cannot consider evidence not submitted during the evidentiary hearing); Minn. R. Civ. App. P. 110.01 (papers filed in district court constitute record on appeal; Minn. R. Civ. App. P. 115.04 (rule 110 applies to certiorari appeals).

that substantial evidence supports the ULJ's decision that Howitz quit his employment and is not eligible to receive benefits.²

Affirmed.

² Howitz does not assert that he qualifies for an exception to receive benefits despite quitting, and we conclude that no exception applies in this case. *See* Minn. Stat. § 268.095, subd. 3(e) (2012) (establishing that quitting in anticipation of discharge is not good reason to quit caused by the employer).