This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0018

Jason Fairman,
Relator,

vs.

Merrill Lynch Pierce Fenner & Smith, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 23, 2013
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 30204056-3

Jason Fairman, Minneapolis, Minnesota (pro se relator)

Merrill Lynch Pierce Fenner & Smith, Inc., Minneapolis, Minnesota (pro se employer)

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

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator, by writ of certiorari, appeals from the decision of an unemployment law judge (ULJ) denying his application for unemployment benefits. He argues that he quit his job as a financial advisor because of a good reason caused by his employer, claiming that because he believed that he would be discharged, he resigned to prevent a discharge from appearing on his publicly accessible professional record. Relator also stresses that his employer did not contest his application for benefits, he received unemployment benefits based on similar facts on a prior occasion, and that coworkers under similar circumstances obtained unemployment benefits. Because the ULJ did not err by concluding that relator quit his employment without a good reason caused by his employer and is ineligible for benefits, we affirm.

FACTS

Relator Jason Fairman began working for Merrill Lynch in January 2011 as a full-time financial advisor. Relator admitted that he quit his employment on or about September 9, 2012, with the expectation that he would be terminated if he did not quit. He explained that, in the event he was terminated for "non-performance," that fact would have been accessible to the public and would have "negatively affect[ed]" his ability to acquire future clients. Specifically, on July 9, relator received "a final written warning from [the] complex director" advising him that he was "not meeting the minimum performance standards of a . . . financial advisor" and referencing a specific commission amount that he failed to satisfy. Relator was advised that he was required to

"demonstrate immediate, significant, [and] sustained improvement of a . . . financial advisor by meeting" a particular goal. The letter did not reference a probationary period. Relator explained that in April, his employer dismissed 15 people, and he had "first-hand knowledge of nine people" who "were given the same letter and they were fired 30 days later."

Relator's employer scheduled a meeting with him and a "third-level" boss, with whom he had little prior interaction, to take place on September 10, 2012. Relator assumed that he would be terminated at the meeting, so he resigned on the day before the meeting because he did not want to attend the meeting and be discharged with no opportunity to resign. At the hearing, relator admitted that he was not informed of the meeting's subject matter or that he would be fired at the meeting and that there were no other reasons prompting his decision to resign.

Relator applied for unemployment benefits and was initially found to be ineligible by the Minnesota Department of Employment and Economic Development (DEED). Relator appealed the determination, and an evidentiary hearing was held before a ULJ. After reviewing relator's testimony, the ULJ determined that relator "quit because he believed he was going to be discharged," that the conduct of relator's employer would not compel an average, reasonable worker to quit and become unemployed, and that, while relator may have had a legitimate personal or business reason to quit, he did not quit because of a good reason caused by his employer "as defined by Minnesota unemployment insurance law." Relator filed a request for reconsideration, and the ULJ affirmed the decision, specifically rejecting relator's arguments that he previously

received unemployment benefits under similar circumstances, that his employer did not participate in the hearing, and that other employees were discharged under similar circumstances. This certiorari appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the conclusion, decision, findings, or inferences are "(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).

I.

Appellant argues that an average, reasonable worker in his circumstances would have been compelled to quit because numerous coworkers were discharged after receiving written warnings for failing to achieve production goals and because of the negative impact the discharge would have on his future professional prospects in the field. An applicant who quits employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012). One exception to ineligibility applies if "the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3." *Id.*, subd. 1(1).

> A good reason caused by the employer for quitting is . . . directly related to the employment and for which the employer is responsible; . . . adverse to the worker; and [one] that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Id., subd. 3(a) (2012). This analysis "must be applied to the specific facts of each case." *Id.*, subd. 3(b) (2012). "Notification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting." *Id.*, subd. 3(e) (2012). "The definition of a good reason caused by the employer for quitting employment provided by this subdivision is exclusive and no other definition applies." *Id.*, subd. (3)(g) (2012). Whether an employee had good reason to quit is a question of law. *Edward v. Sentinel Mgmt. Co.*, 611 N.W.2d 366, 367 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). Application of a statute to undisputed facts is a legal conclusion subject to de novo review. *Harrison ex rel Harrison v. Harrison*, 733 N.W.2d 451, 453 (Minn. 2007).

The ULJ properly concluded that relator is ineligible for benefits. First, the plain language of section 268.095, subdivision 3(e), provides that "[n]otification of discharge in the future . . . is not considered a good reason caused by the employer for quitting." In this case, there is no evidence that relator had been notified by his employer that he was being discharged at the time of his resignation or in the future. Thus, it is clear that, under subdivision 3(e), relator did not quit because of a good reason caused by his employer.

In prior decisions, we have rejected similar claims that a resignation in anticipation of a future discharge was a "good reason" for quitting caused by an employer. In *Ramirez v. Metro Waste Control Comm'n*, this court affirmed a determination that a claimant, who resigned his position as a building operator in order to avoid a discharge for tardiness, was ineligible for unemployment benefits. 340 N.W.2d 355, 356 (Minn. App. 1983). We reasoned that while he "was told by his supervisor that it was likely he would be terminated, . . . supervisors testified that a formal decision to discharge claimant had not yet come down through the chain of command" by the date of the complainant's resignation. *Id.* at 357. We held that our affirmance of the denial of benefits under these circumstances was consistent with "[t]he general policy of this state . . . that unemployment compensation benefits are extended and confined to persons unemployed through no fault of their own." *Id.* at 357–58. In *Seacrist v. City of Cottage Grove*, 344 N.W.2d 889, 890–92 (Minn. App. 1984), this court, with citation to *Ramirez*, affirmed the denial of unemployment benefits to a police sergeant who resigned his position in order to avoid disciplinary proceedings and apply for a position with another employer on the basis that he voluntarily quit his position. *Ramirez* and *Seacrist* have been characterized as standing for the proposition that "one who chooses to resign rather than face disciplinary proceedings has voluntarily quit." *City of Melrose v. Klasen*, 392 N.W.2d 733, 735 (Minn. App. 1986).

In light of the clear statutory language of section 528.095, subdivision 3(e), and our prior decisions in *Ramirez* and *Seacrist*, the ULJ did not err by concluding that relator quit his employment voluntarily and without a good reason caused by his employer.

II.

Relator contends that he is entitled to unemployment benefits because his employer did not participate in the unemployment proceedings. But an employer's nonparticipation in the proceedings is irrelevant to the determination of whether the ULJ erred in denying benefits. "Unemployment benefits are paid from state funds and are not considered paid from any special insurance plan, nor as paid by an employer. An application for unemployment benefits is not considered a claim against an employer but is considered a request for unemployment benefits from the trust fund." Minn. Stat. § 268.069, subd. 2 (2012). While "[t]he [ULJ] must ensure that all relevant facts are clearly and fully developed[,]" Minn. Stat. § 268.105, subd. 1(b) (2012), the record in the instant case, based upon the undisputed facts submitted by relator, does not support relator's claim for benefits. Relator also asserts that he received unemployment benefits under similar circumstances in 2009. However, this prior situation is distinguishable because in 2009, relator's employer informed relator that he either had to resign, or that he would be discharged. There is no evidence that relator was given such an ultimatum in this case.

Finally, on appeal, relator asserts that numerous coworkers were entitled to unemployment benefits after "experienc[ing] the same circumstances and events." There is nothing in the record substantiating this claim. Relator's testimony establishes that because coworkers had been discharged previously under similar circumstances, he chose to preemptively resign rather than be terminated. We note that while relator testified that

these coworkers were actually discharged, he does not assert that any coworkers resigned and were thereafter approved for unemployment benefits.

Affirmed.