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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0368**

Makiya K. Bunisso,  
Relator,

vs.

Masterson Personnel, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 12, 2008  
Reversed  
Schellhas, Judge**

Department of Employment and Economic Development  
File No. 1294406

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and  
Schellhas, Judge.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator is not entitled to unemployment benefits because she quit her employment by failing to contact respondent after the job to which it had assigned her was completed. Because the “Assignment Request Policy” notice that respondent presented to relator did not conform to Minn. Stat. § 268.095, subd. 2(d) (2004), we reverse.

### FACTS

Relator Makiya Bunisso applied for work with respondent Masterson Personnel, Inc. (Masterson) in 2005. As part of the application process, relator signed an “assignment request policy,” which provided:

I understand that I am required to request an additional job assignment within 5 days of completing or ending a job assignment. I also understand, that if I fail to request an additional assignment, Masterson Personnel will consider this to be a *termination* of my employment.

By signing this document I hereby acknowledge that I have read, understand and was provided a copy of this document, separate from other policies [sic.] and that this document was written in clear and concise language, informing me that my *employment* [sic.] benefits may be affected. This policy is in accordance with Minnesota Unemployment Insurance Program Law, Section 268.095, Subdivision 2.

Furthermore, I understand that in order to request an additional assignment, I must call the office that I registered in, between the hours of 7:30 A.M. and 5:30 P.M., Monday through Friday, and speak directly with a Staffing Supervisor.

(Emphasis added.)

Masterson assigned relator to a job with Wells Fargo, where she worked for 13 months. Wells Fargo then discharged her because it has a policy of hiring temporary employees for no more than a year. After being discharged, relator did not contact Masterson.

Relator applied for unemployment benefits from the Department of Employment and Economic Development (DEED). Her benefits were denied on the ground that she had quit her employment by failing to notify Masterson of her discharge from Wells Fargo.<sup>1</sup> Relator challenges the denial of benefits.

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

The ultimate determination of whether an employee is disqualified from receipt of benefits is a question of law, which this court reviews de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989). While this court defers to a ULJ's findings of fact, the court exercises its independent judgment on questions of law. *See id.* (applying this standard to DEED commissioner's decisions). The application of a statute to undisputed facts is a question of law, which this court reviews de novo. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). The issue here is the applicability of Minn. Stat. § 268.095, subd. 2(d) (2004), which provides:

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<sup>1</sup> The notice denying benefits informed relator: "If you appeal this determination, continue to request benefits every two weeks, or as directed by the Department. If the appeal decision is in your favor, you can only be paid for weeks for which timely requests were made." Relator made no further requests for benefits; therefore, only the benefits to which her one request entitled her are at issue here.

An applicant who, within five calendar days after completion of a suitable temporary job assignment from a staffing service employer, (1) fails without good cause to affirmatively request an additional job assignment, or (2) refuses without good cause an additional suitable job assignment offered, shall be considered to have quit employment.

This paragraph shall apply only if, at the time of beginning of employment with the staffing service employer, the applicant signed and was provided a copy of a separate document written in clear and concise language that informed the applicant of this paragraph and that unemployment benefits may be affected.

For purposes of this paragraph, “good cause” shall be a reason that is significant and would compel an average, reasonable worker, who would otherwise want an additional temporary job assignment with the staffing service employer, (1) to fail to contact the staffing service employer, or (2) to refuse an offered assignment.

For purposes of this paragraph, a “staffing service employer” is an employer whose business involves employing individuals directly for the purpose of furnishing temporary job assignment workers to clients of the staffing service.

Minn. Stat. § 268.095, subd. 2(d). It is undisputed that Masterson is a staffing service employer.

Masterson’s assignment request policy does not meet the statutory criterion that it be written in “clear and concise language that inform[s] the applicant of this paragraph”—i.e., that an applicant who fails to call the staffing service employer within five days of completing an assignment “shall be considered to have quit employment”—“and that unemployment benefits may be affected.” The assignment request policy states instead that Masterson will consider failure to request an additional assignment within

five days to be a “termination” of employment. A “termination” of employment is not a “quit,” and it is a “quit,” not a “termination,” that is the basis for denial of unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2004). Moreover, the assignment request policy says nothing about *unemployment* benefits; rather, it informs the applicant only that “*employment* benefits may be affected” by a failure to call for an additional assignment. “Employment benefits” comprise such matters as sick leave or vacation time, but they do not include “unemployment benefits,” as defined in Minn. Stat. § 268.035, subd. 26a (2004). Nothing in the assignment request policy informs a reader that failing to request another assignment is a “quit” that can result in disqualification from unemployment benefits under Minn. Stat. § 268.095 (2004).

By its own language, the assignment request policy purports to be “in accordance with Minnesota Unemployment Insurance Program Law, Section 268.095, Subdivision 2” and requires the applicant to acknowledge that the policy is “written in clear and concise language”; however, by using the term “termination” instead of the statutorily required term “quit,” and by referring to “employment benefits” instead of the statutorily required term “unemployment benefits,” the language in the assignment request policy is neither clear nor concise and is not in compliance with Minn. Stat. § 268.095, subd. 2(d). Citation to a statute neither brings a document into conformity with that statute nor renders the language of the document clear and concise. *See Plocher v. Comm’r of Pub. Safety*, 681 N.W.2d 698, 703 (Minn. App. 2004) (rejecting argument that citation to a statute in a notice corrected misleading language in the notice).

Because relator did not receive the “document written in clear and concise language that informed [her] of [Minn. Stat. § 268.095, subd. 2(d)] and that unemployment benefits may be affected,” as required by Minn. Stat. § 268.095, subd. 2(d), she did not quit her employment within the meaning of the statute and is entitled to the unemployment benefits she requested.<sup>2</sup>

**Reversed.**

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<sup>2</sup> Because we conclude that defects in Masterson’s assignment request policy notice render Minn. Stat. § 268.095, subd. 2(d), inapplicable here, we do not address relator’s other issues.