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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1296**

Collette M. Sannes,
Relator,

vs.

Wal-Mart Associates Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed July 1, 2008
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 6423 07

Collette M. Sannes, P.O. Box 774, Thief River Falls, Minnesota 56701 (pro se relator)

Wal-Mart Associates Inc., c/o TALX UCM Services, Inc., P.O. Box 283, St. Louis,
Missouri 63166 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic
Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
Minnesota 55101 (for respondent Department)

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the decision by the unemployment-law judge that she was disqualified from receiving unemployment benefits because she quit work without good reason caused by the employer. We affirm.

FACTS

Relator Collette Sannes began working at the Thief River Falls Wal-Mart in March 2006 and worked an average of 20 hours per week. In early 2007, relator was pregnant and experiencing severe morning sickness. Together, relator and her doctor decided that she should stop working. Relator submitted a letter of resignation in mid-January 2007, and her last day of employment with Wal-Mart was January 31, 2007.

Relator established an unemployment-benefits account with the Department of Employment and Economic Development (DEED) in early April 2007. On April 24, 2007, a DEED adjudicator concluded that relator was disqualified from receiving unemployment benefits.

Relator appealed the adjudicator's decision, and in May 2007, an unemployment-law judge (ULJ) heard the matter by telephone hearing. Only relator testified during the hearing; relator's employer declined to participate in the hearing. When asked by the ULJ whose decision it was to end her employment, relator replied: “[I]t was mine and my doctor's.” When asked whether she was discharged, relator answered: “No, I wasn't.” Relator explained:

Well, basically how it happened was, I was severely ill [with morning sickness]. I couldn't get out of bed. I would go to work, but maybe could spend an hour. And I know that the vision center manager [at Wal-Mart] was getting a little fed up with it and our customers started to suffer for it, because I wasn't able to help them as well as I should have been. And it got to the point where I thought, you know, it would be better off if they could find somebody else to replace me, and I quit.

Relator also testified that she talked to the store manager but that he did not discuss with her the option of taking a leave of absence. But relator admitted that she did not contact the personnel department or otherwise check into whether such an option was available.

In his findings of fact and decision, the ULJ concluded that relator was disqualified from receiving unemployment benefits under Minn. Stat. § 268.095, subds. 1, 3 (2006), because she quit her employment without good reason caused by her employer. The ULJ found that relator did not request accommodation for her medical condition, nor did she request a leave of absence. The ULJ noted that “under [Minn. Stat. § 268.095,] at the very least she must request some form of accommodation from the employer before quitting if she wishes to avoid disqualification.”

Relator requested reconsideration and the ULJ affirmed his findings of fact and decision. This certiorari appeal follows.

D E C I S I O N

Relator argues that she should not be disqualified from receiving unemployment benefits because her employer's acts caused her to leave her job. We disagree.

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 findings, inferences, conclusion, or decision are unsupported by substantial evidence or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2006). This court views the ULJ's findings in the light most favorable to the decision and will not disturb those findings that are supported by substantial evidence in the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Whether an employee voluntarily quit is a question of fact for the decisionmaker. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). But “[w]hether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law, which this court reviews de novo.” *Id.* “A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2006).

Here, the ULJ found that relator voluntarily quit her employment with Wal-Mart without good reason caused by her employer. The record supports the ULJ’s finding. Relator admitted to the ULJ that the decision to leave her job was her own. If an employee quits employment, he or she is disqualified from receiving unemployment benefits unless there is an applicable exception. *See* Minn. Stat. § 268.095, subd. 1 (2006) (listing exceptions).

One such exception to disqualification applies when “the applicant quit the employment because the applicant’s serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made

available.” Minn. Stat. § 268.095, subd. 1(7). Although it is undisputed that relator suffered physical illness and that her doctor advised her to leave her job, relator does not qualify for this exception because she did not ask her employer for any accommodations.

Another exception to disqualification applies when the applicant quit the employment because of a good reason caused by the employer. *Id.*, subd. 1(1). A good reason caused by the employer for quitting 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.” *Id.*, subd. 3(a) (2006).

In her brief, relator suggests that her employer’s actions caused her to leave her job and that she “was harassed due to . . . time missed from work.” But there is no support in the record for this assertion and relator did not mention any harassment during her telephone hearing with the ULJ.

Relator also argues that even though she resigned from employment and did not take a leave of absence, because she would not have returned to her job before such a leave of absence would have ended, she would have been fired and left unemployed even if she had opted for a leave of absence. But relator cannot preempt termination by her employer and later claim that she did not voluntarily quit. *See Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d 355, 357-58 (Minn. App. 1983) (holding that an employee who leaves employment rather than facing termination or disciplinary action voluntarily quits without good reason caused by the employer).

Because there is substantial evidence to support the ULJ's finding that relator quit her employment, and because she does not qualify for any applicable exception, we conclude that the ULJ did not err by concluding that relator was disqualified from receiving unemployment benefits.

Affirmed.