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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1302**

Elaine H. Moriarty,
Relator

vs.

Wells Fargo Bank NA,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed July 22, 2008
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 5706-07

Elaine H. Moriarty, 6804 Portland Avenue South, Richfield, MN 55423 (pro se relator)

Wells Fargo Bank NA, c/o Talx Employer Services LLC, P.O. Box 1160, Columbus, OH
43216-1160 (respondent)

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

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Respondent Wells Fargo Bank, N.A. (Wells Fargo) employed relator Elaine Moriarty as a full-time sub-prime loan processor from August 22, 2005 to March 2, 2007. Relator quit her employment less than two weeks after Wells Fargo issued a performance improvement plan (PIP) to address her performance deficiencies. Relator now appears before this court pro se on a writ of certiorari, challenging the ULJ's denial of her request for unemployment benefits. Because we find no error in the ULJ's determination that relator quit her employment for other than good cause attributable to Wells Fargo and was thus disqualified from receiving unemployment benefits, we affirm.

DECISION

In reviewing an unemployment case, this court may reverse or modify a ULJ's decision if it prejudiced the substantial rights of the petitioner because the decision is affected by error of law, unsupported by substantial evidence, or arbitrary and 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 findings that are substantially supported by the record. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court also defers to the ULJ's credibility determinations and evaluation of conflicting evidence. *Id.*

“Whether an employee has been discharged or voluntarily quit is a question of fact[.]” *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). But whether an employee quit without good reason caused by the employer is a legal

conclusion subject to de novo review. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Relator admits that she quit her employment but claims that she had good reason to quit. “[G]ood reason caused by the employer” is a statutorily permissible ground for an employee to quit under Minn. Stat. § 268.095, subd. 1(1) (2006), and is defined as “directly related to the employment and for which the employer is responsible; . . . adverse to the worker; and . . . would compel an average, reasonable worker to quit[.]” Minn. Stat. § 268.095, subd. 3(a) (2006).

Relator attacks the factual support for the issuance of her PIP. Relator claims that Wells Fargo did not have a basis for seeking an improvement in her performance because her performance was good; she worked in a hostile environment where she was out of favor with her manager; and she was subject to age discrimination, an issue that she did not address before the ULJ. Contrary to these claims, however, the PIP states that Wells Fargo discussed work performance concerns with relator on five occasions prior to issuance of the PIP. Among the concerns for “levels of customer service,” the PIP states:

. . . You are continuing to provide negative customer service to HMCs and borrowers. Examples are appraisals not given to underwriters within 48 hours of completion, no follow-up on conditions within 48 hours of request, not entering [] notes of every conversation, expired commitments not updated immediately, expired closing dates not updated immediately, not contacting borrowers every five days, short and rude comments given to our HMCs, welcome calls not completed within 48 hours of receipt, closings not scheduled with title companies as were communicated to the borrowers, and providing inappropriate financial advice to our borrowers.

Relator denies that any of these issues were valid and flatly denies that she had performance issues. The ULJ was convinced by the PIP and apparently did not find relator's testimony credible, stating that "[t]he preponderance of the evidence shows that [relator] quit the employment without a good reason caused by Wells Fargo Bank[]" and that relator "decided to quit the employment because she did not think she would be able to meet the terms of the performance improvement plan and she did not want to be discharged."

The record supports the ULJ's decision that relator did not quit for good cause. She admittedly quit after receiving a poor performance review and because she thought she was about to be discharged. The PIP required relator to close 20 loans per month, 13 during the month that included issuance of the PIP, but relator was able to close only nine loans for that month. Further, the PIP required relator to improve her performance within 30 days or be subject to discipline that included possible discharge. "Notification of discharge in the future . . . shall not be considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(e) (2006). The evidence provided by Wells Fargo substantially supports the ULJ's decision when, as we must, we view the evidence in the light most favorable to the decision. *See Skarhus*, 721 N.W.2d at 344. Further, even if relator's testimony was fully accredited by the ULJ, it appears to establish only that she had irreconcilable differences with her employer and that she was dissatisfied with working conditions, factual bases that are not sufficient to establish a good cause to quit. *See Ryks v. Nieuwsma Livestock Equip.*, 410 N.W.2d 380, 382 (Minn. 1987) (holding irreconcilable differences with employer as not constituting good cause to quit).

Finally, we decline to address any claim by relator that she was forced out due to age discrimination because that issue was not raised to or addressed by the ULJ. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that reviewing court will address only issues raised below).

Affirmed.