**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1807**

Ceqethia M. Chatman,
Relator,

vs.

Speedway SuperAmerica LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 28, 2008**
**Affirmed**
**Ross, Judge**

Department of Employment and Economic Development
File No. 8554 07

Karl E. Robinson, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402-4629 (for relator)

Benjamin D. Lehman, Katrina I. Gulstad, Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Speedway SuperAmerica, LLC, c/o Jon Jay Associates, Inc., P.O. Box 182523, Columbus, OH 43218-2523 (respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Harten, Judge.*

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## U N P U B L I S H E D  O P I N I O N

**ROSS**, Judge

Relator Ceqethia Chatman appeals from an unemployment law judge's (ULJ) determination that she is disqualified from receiving unemployment benefits because she quit her employment with Speedway SuperAmerica, LLC. Chatman argues that she did not quit or, in the alternative, that she quit for good reason caused by SuperAmerica, contending that a recently enacted statutory provision that grants unemployment benefits to an employee who quits because of loss of childcare should have retroactive effect. Because the ULJ correctly found that Chatman quit employment, and because the statute does not apply to this case, we affirm.

## FACTS

Relator Ceqethia Chatman worked full time at a SuperAmerica convenience store until March 13, 2007. She has four children between the ages of four and nine and worked weeknights from 10:00 p.m. until 8:00 a.m. Chatman's boyfriend, who works daytime and evening hours, cared for Chatman's children while she was at work.

After Chatman's separation from SuperAmerica and request for unemployment benefits, a ULJ held an evidentiary hearing concerning the circumstances of the separation. His factual findings are essentially as follows. Soon after March 6, 2007, Chatman learned that a manager had changed her schedule to the 2:00 p.m. to midnight shift, effective seven days later on March 13, 2007. Chatman reported to work on schedule and spoke to the new store manager, Jarret Persons, and the district manager, Shelly Brown. Chatman complained that the 2:00 p.m. shift was unworkable and that she

would like to return to the 10:00 p.m. shift. Persons explained that two new employees were hired for the 10:00 p.m. shift, but she stated that she would inquire whether either of them would prefer the 2:00 p.m. shift. Brown told Chatman that they would try to accommodate her preference. Chatman did not, however, explain that daycare difficulties were the reason she could not work the 2:00 p.m. shift, and she did not tell her supervisors that she was unable to work the 2:00 p.m. shift the next day, March 14, 2007.

While at work on March 13, 2007, Chatman called other employees and asked them to work for her on March 14, but none agreed to do so. Chatman did not report to work or call in for the 2:00 p.m. shift on March 14. At 4:30 p.m., Persons was still waiting for Chatman to arrive. He called Chatman and left a message, stating that if Chatman did not come to work, SuperAmerica would assume that she had quit. Chatman did not report to work or return the call.

Initially, the Department of Employment and Economic Development determined that Chatman had quit for good reason caused by SuperAmerica and was therefore not disqualified from receiving unemployment benefits. SuperAmerica appealed that determination and, after a hearing, a ULJ concluded that Chatman quit her employment but not for good reason caused by SuperAmerica. Chatman appeals by certiorari.

## D E C I S I O N

### I

Chatman argues that the ULJ's finding that she quit her employment is unsupported by substantial evidence because SuperAmerica made the decision to end her employment. Whether an employee was discharged or quit is a question of fact. *Nichols*

*v. Reliant Eng'g & Mfg., Inc*., 720 N.W.2d 590, 594 (Minn. App. 2006). We review a ULJ's findings in the light most favorable to the ULJ's decision and will not disturb those findings when they are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

A person who quits employment without a statutory justification, such as good reason caused by her employer, is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1(1) (2006). A quit occurs when the employee makes the decision to end employment. *Id*., subd. 2(a) (2006). A discharge occurs when an employer's words or actions would lead a reasonable employee to believe that she is no longer allowed to work for the employer. *Id.*, subd. 5(a) (2006).

The ULJ found that Persons called Chatman on March 14 and told her that if she did not come to work, SuperAmerica would assume that she had quit. The ULJ also found that Chatman did not come into work after receiving that message. These facts support the conclusion that at the time employment ended, the decision to end it was Chatman's.

We recognize that, in some situations, an employer's telephone call stating, "If you do not show up to work, we will assume you quit" may constitute (or veil) a discharge. The test to distinguish a quit from a discharge is not whether the employer uses the term "quit." The question is whether the employer's words, in context, would cause a reasonable employee to believe that she is no longer allowed to work. *Id*.

But this case involves a circumstance where the ULJ could find that the employer inferred from the ongoing absence that Chatman decided to end her employment. And

when an employee chooses to end employment, a quit occurs. Minn. Stat. § 268.095, subd. 2(a). Before her supervisor described how he would interpret Chatman's absence, Chatman had declared that her new shift was not acceptable to her. When Chatman did not show up for her March 14 shift, it was not unreasonable for SuperAmerica to assume that she had quit and to inform her that it would construe her continued absence as a quit. The record supports the ULJ's factual determination that Chatman quit her employment.

**II**

Chatman alternatively argues that she quit for good reason caused by SuperAmerica. "The determination that an employee quit without good reason [caused by] the employer is a legal conclusion" reviewed de novo. *Nichols*, 720 N.W.2d at 594. An employee who quits for good reason caused by the employer is not disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 1(1). A good reason caused by the employer 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). But an employee "must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting." *Id.*, subd. 3(c).

We need not decide if the change in Chatman's schedule constitutes "good reason" to quit under section 268.095 because Chatman did not give SuperAmerica any opportunity to return her schedule to her preference. Chatman does not challenge the

ULJ's finding that she did not give SuperAmerica an opportunity to return her to her previous shift. Because a quit for good reason requires an employee to give her employer such an opportunity, Chatman's quit was not for good reason caused by SuperAmerica.

**III**

Chatman next urges us to apply a recently enacted statutory provision that guarantees that when an employee quits because of loss of childcare, the employee is eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1(8) (Supp. 2007). This new provision "is effective and applies to all determinations and decisions issued on or after September 30, 2007." 2007 Minn. Sess. Law ch. 128, art. 1, § 16, at 942. The determination here occurred before the application date of the legislation.

"No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2006); *see Am. Family Ins. v. Metro. Transit Comm'n*, 424 N.W.2d 825, 827 (Minn. App. 1988) (explaining that we disfavor retroactive application of statutes). Despite the presumption against retroactivity, statutes can be applied retroactively; but in cases where the legislature desired to apply a law to pending cases, it has done so clearly. *See, e.g., Marose v. Maislin Transp.*, 413 N.W.2d 507, 511–12 (Minn. 1987) (quoting a session law that states certain changes "are effective for all cases pending . . . regardless of the date of injury, date of hearing, or date of appeal"). For instance, "language applying a statute to 'all cases pending' and establishing an immediate effective date overcomes the presumption against retroactive application." *K.E. v. Hoffman*, 452 N.W.2d 509, 512 (Minn. App. 1990), *review denied*

(Minn. May 7, 1990). Because the legislature did not clearly provide that the amendment applies to pending cases, it is not controlling here. We affirm the ULJ's decision.

**Affirmed.**