

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1825**

Hoa Ly,
Relator,

vs.

Navarre Corporation (1991),
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 2, 2008
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 8846 07

Hoa Ly, 2427 Elliot Avenue South, Minneapolis, MN 55404 (pro se relator)

Jessica Lipsky Roe, Bernick & Lifson, PA, 5500 Wayzata Boulevard, Suite 1200,
Minneapolis, MN (for respondent Navarre Corporation)

Lee B. Nelson, Katrina I. Gulstad, 332 Minnesota Street, Suite E200, St. Paul, MN
55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

In this certiorari appeal, relator challenges the determination of the unemployment-law judge (ULJ) that he is disqualified from receiving unemployment benefits because he quit his employment without a good reason caused by the employer. Because the ULJ properly applied the law and did not abuse her discretion, we affirm.

DECISION

On certiorari appeal this court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006). We review the ULJ's factual findings in the light most favorable to the decision and will not disturb findings that are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Generally, under Minnesota law, an employee who quits employment is disqualified from unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2006).

On May 15, 2007, Hoa Ly was involved in an argument with a co-worker. As a consequence, Ly's supervisor sent Ly home early and told him that when he returned to work on May 17,¹ he would need to meet with human resources. Ly did not call in or report for work on May 17, at which point his employer, Navarre Corporation, sent him a

¹ Relator was not scheduled to work on May 16.

letter explaining that he had been discharged because of his “threatening actions towards a coworker.”

At the hearing before the ULJ, Ly and Navarre’s human-resources manager testified. Because Ly did not speak English, an interpreter was provided for him. Following the hearing, the ULJ issued findings of fact and decision, determining that Ly had quit his employment before Navarre made the final decision to discharge him. The ULJ concluded that Ly quit because he believed that he would be discharged and because he was ill; accordingly, the ULJ determined Ly did not quit for a good reason caused by the employer.

Ly argues that the ULJ erroneously determined that he quit his employment. The issue of whether an employee quit employment or was discharged is a question of fact. *Midland Elec., Inc., v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). A quit 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). A discharge, on the other hand, occurs “when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2006).

Ly admitted before the ULJ that he did not report to work on May 17 and that he did not call in to report his absence. Ly testified that he did not report to work on May 17 “[b]ecause they tried to discharge me on purpose, so I quit.” He also stated he had “to leave work . . . because I got [an] infection” and that he “couldn’t keep going on [with] my job because [of] my health.” At one point, Ly testified that “they already discharged

me, so I have to leave.”² But Ly testified that his supervisor told him to return to work on May 17 to meet with human resources. A reasonable employee, being told to return to work, would not believe that he or she had been discharged. The conclusion that Ly quit his employment when he did not show up for work on May 17 is therefore supported by substantial evidence.

On certiorari appeal, Ly also asserts that there were translation problems at the hearing. Specifically, he contends that “[m]y English is not that good so I sometimes use the wrong words, like when I say ‘I quit,’ I mean leave work for awhile to get better health so I can come back to work. I did not mean, ‘I quit my job at Navarre.’ They fired me.” But whatever Ly meant when he said he “quit,” the fact remains that on May 17 he did not report for work even though he admitted he was told to return. Significantly, Ly does not challenge the translation on this salient point. Accordingly, we conclude that his translation-error contention is belied by his May 17 absence.

Finally, Ly challenges the testimony regarding the argument with his co-worker. Specifically, Ly contends he did not kick the co-worker and was not given an opportunity to dispute this. But the disqualification for unemployment benefits was not based on a determination of employee misconduct, and therefore any information regarding the

² In his appellate brief, Ly asserts that on the morning of May 17, he received a voicemail on his answering machine from Navarre’s human-resources manager stating that Ly did not need to come to work because he was fired. But Ly did not testify to this at the hearing, even though the ULJ asked a series of questions regarding his reason for not reporting to work on May 17, and it seems those questions would have elicited such information had it occurred. In any event, because this information is outside the record, we will not consider it on appeal. *See* Minn. R. Civ. App. P. 110.01 (the record on appeal consists of “[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings”).

argument with the co-worker is irrelevant to this certiorari appeal. Ly also asserts that he was subject to racial and physical harassment by the co-worker. This issue was not raised at the hearing, and we decline to address it on appeal. *See Haskins v. Choice Auto Rental, Inc.*, 558 N.W.2d 507, 512 (Minn. App. 1997) (issues not raised below will not be considered on appeal).

Ly does not challenge the ULJ's determination regarding good cause, and we conclude that the ULJ's determination that Ly quit without a good reason caused by the employer is supported by substantial evidence.

Affirmed.