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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2287**

Barbara Ritt,
Relator,

vs.

Northwest Graphic Supply Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 31, 2010
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 23134168-3

Barbara Ritt, St. Paul, Minnesota 55104 (pro se relator)

Northwest Graphic Supply Inc., Minneapolis, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Barbara Ritt appeals from the unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits. Relator argues that the ULJ erred by concluding that she did not fall under the statutory exception allowing employees to obtain benefits if they quit due to loss of childcare. We affirm.

DECISION

This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions of law, or decision are, among other things, affected by an error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2008). "We view the ULJ's factual findings in the light most favorable to the decision." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination regarding whether an employee was properly found ineligible for unemployment benefits is a question of law that we review de novo. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003).

Employees who quit a job are ineligible for unemployment benefits except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). An employee has quit when "the decision to end the employment was, at the time the employment ended, the employee's." *Id.*, subd. 2(a) (Supp. 2009). Whether an employee quit is a question for the fact-finder. *Hayes*, 665 N.W.2d at 552. Here, relator does not dispute the ULJ's finding that she quit her job.

But an applicant who quit a job may be eligible for unemployment benefits when “the applicant’s loss of child care for the applicant’s minor child caused the applicant to quit the employment, provided the applicant . . . requested time off or other accommodation from the employer and no reasonable accommodation is available.” Minn. Stat. § 268.095, subd. 1(8). Relator claims that she qualifies under this exception based on her alleged statement to her employer that “I need to give my two week notice unless we can figure something out.”

But relator did not include this statement in her presentation to the ULJ. Thus, it is not part of the record on appeal, and matters not received into evidence at the hearing may not be considered by this court. *See Imprint Technologies, Inc. v. Comm’r of Econ. Security*, 535 N.W.2d 372, 378 (Minn. App. 1995). In addition, there is no evidence to support relator’s assertion that she made this statement to her employer.

Although relator was in a difficult situation when she lost childcare for her then 14-year-old sons, we are compelled to follow the law, which requires relator to request an accommodation in order to qualify under the exception. And the record supports the ULJ’s finding that relator did not request an accommodation from her employer. When the ULJ specifically asked relator whether she requested an accommodation, relator responded: “You know, no, I didn’t,” and “I guess I didn’t ask for it and it wasn’t offered, you know, if I could work part time or change hours[.]” In addition, relator’s employer testified that relator did not request an accommodation, and that “up until just before she gave notice, I was under the impression that it was not an extreme situation.”

Thus, there is evidence to support the ULJ's determination that relator did not request an accommodation and does not qualify under the statutory exception.

Relator also claims that she meets the "request for accommodation" requirement because her employer testified that he did not know of any part-time positions for which she would have qualified. But the statutory exception requires the applicant to have "requested time off or other accommodation from the employer." Minn. Stat. § 268.095, subd. 1(8). There is no exception to this requirement for employees who believe that no accommodation will be made.

Finally, in response to appellant's assertion in her brief that she "does not have a voice unless through an attorney," we note that we affirm the ULJ, not because of appellant's lack of an attorney or argument on appeal, but because appellant failed, at earlier stages in these proceedings, to show that she is eligible for benefits based on a statutory exception to ineligibility.

Affirmed.