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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-964**

Debra Stieve,
Relator,

vs.

Ink On Paper Co. (Corp), n/k/a Five Star Direct,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 8, 2011
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 24246725-3

Debra Stieve, Winsted, Minnesota (pro se relator)

Five Star Direct, Winsted, Minnesota (respondent)

Lee B. Nelson, Christina Altavilla, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent-department)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's determination that she is ineligible for unemployment benefits because she quit her employment without good reason caused by her employer. We affirm.

FACTS

Relator Debra Stieve worked for Five Star Direct from May 2009, to December 2009. Stieve originally worked full-time in the embossing area. On or about October 26, Stieve told Five Star Direct that she wanted to work fewer hours because she was currently collecting unemployment benefits. Stieve proposed a part-time schedule, and Five Star Direct agreed to reduce Stieve's hours. On November 17, Stieve began working the part-time schedule that she had proposed.

At that time, the embossing area was operating 24 hours per day, 7 days per week; it was Five Star Direct's busiest time of the year. Five Star Direct's vice president of operations, Loren Baumann, hired a new employee to work in the embossing area. When Stieve reported to work on December 22, she discovered that the new employee's name had been substituted for hers on an embossing-area schedule. After Stieve began working, Baumann arrived and informed Stieve that Five Star Direct was transferring her to the production area. Stieve said, "no" and walked away. Later, Stieve punched out and left the premises without communicating with Baumann or human-resources personnel. On December 31, Stieve called Five Star Direct to request her final check.

Five Star Direct informed Stieve that she could not have her check early because she had quit. In response, Stieve asserted that she had been discharged.

Stieve applied for unemployment benefits and established a benefits account with the Department of Employment and Economic Development (DEED). A department adjudicator determined that Stieve was ineligible to receive unemployment benefits. Stieve appealed the determination, and an evidentiary hearing was held before an unemployment-law judge (ULJ). Stieve and Baumann testified at the hearing. The ULJ determined that Stieve is ineligible for unemployment benefits because she quit her employment without a good reason caused by her employer. Stieve filed a request for reconsideration, and the ULJ affirmed the ineligibility determination. This certiori appeal follows.

D E C I S I O N

Review of a ULJ's eligibility determination is governed by Minn. Stat. § 268.105, subd. 7(d) (2008), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Stieve claims that she was discharged from her employment at Five Star Direct and that the ULJ erred in finding that she quit. “Whether an employee has been discharged or voluntarily quit is a question of fact.” *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). The ULJ’s findings of fact are viewed in the light most favorable to the decision and we defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb factual findings if they are supported by substantial evidence. *Id.* Substantial evidence is defined as: “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

“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) (Supp. 2009). “A discharge from employment occurs when any words or actions would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” Minn. Stat. § 268.095, subd. 5(a) (2008). An employee who quits employment is ineligible to receive unemployment benefits, but an exception applies when an employee quit because of a good reason caused by the employer. Minn. Stat. § 268.095, subd. 1(1) (Supp. 2009).

In finding that Stieve quit her employment, the ULJ explained,

[t]he evidence does not show that Baumann made any statement or action that would lead a reasonable employee to believe that [Five Star] would no longer allow her to work for [it] in any capacity. In fact, both sides agree that Baumann told Stieve he was going to put her in production. Stieve's claim that she thought she was fired is not credible.

The ULJ's reasoning is sound. Baumann's actions would not lead a reasonable employee to believe that Five Star Direct would no longer allow Stieve to work for it in any capacity. Five Star Direct did not communicate an intent to end Stieve's employment. Five Star Direct merely attempted to transfer Stieve from one department to another. Stieve argues that because Baumann turned and walked away from her after she refused the transfer, she believed that she had been fired. Stieve also argues that she believed she had been discharged because Five Star Direct did not contact her after she walked off the job. The ULJ determined that Stieve's claim that she thought she was fired is not credible, and we defer to this credibility determination. *See Skarhus*, 721 N.W.2d at 344. Moreover, the facts of this case bear little resemblance to those found to have supported an employee's reasonable belief that employment was no longer available. *See, e.g., Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985) (holding that an employee reasonably believed that he had been discharged, when employer asked him to turn in his tools, said that employer could not guarantee work when employee returned from a leave of absence, and walked away when employee asked whether he should call when he returned).

Substantial evidence supports the ULJ's findings that Stieve verbally refused Five Star Direct's decision to assign her to the production area, left the work place without

notifying Five Star Direct, and did not contact Five Star Direct until nine days later. And this evidence supports the ULJ's finding that the decision to end employment was Stieve's.

Stieve argues that if she did quit, it was for a good reason caused by Five Star Direct.

(a) 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.

....

(g) The definition of a good reason caused by the employer for quitting employment provided by this subdivision is exclusive and no other definition applies.

Minn. Stat. § 268.095, subd. 3 (2008). Whether an employee had a good reason to quit is a question of law, which we review de novo. *Munro Holding, LLC v. Cook*, 695 N.W.2d 379, 384 (Minn. App. 2005).

Stieve argues that she was hired to perform embossing work and that she had only worked in the embossing area, suggesting that a transfer to the production area was somehow inappropriate. Stieve also complains that Five Star Direct did not inform her that her part-time schedule was not working out prior to announcing its decision to transfer her to the production area. We note that Baumann testified that Stieve's transfer only became necessary because of her reduced hours. And although we appreciate that Five Star Direct's failure to provide advance notice of the transfer likely frustrated Stieve,

her preference for embossing work and her desire to remain in the embossing area does not establish that Five Star Direct's decision to transfer her is an adversity that would compel an average, reasonable worker to quit and become unemployed. *See Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 801-02 (Minn. App. 2005) (determining that an employee did not have a good reason to quit where she was being transferred for continued employment to a nearby location and her concerns about adverse consequences were based on speculation); *Portz v. Pipestone Skelgas*, 397 N.W.2d 12, 14 (Minn. App. 1986) (stating that a good reason to quit "does not encompass situations where an employee . . . is simply frustrated or dissatisfied with his working conditions"). In fact, Baumann testified that employees at Five Star Direct were often moved from area to area, as needed.

Moreover, if Stieve felt that the transfer to the production area was somehow adverse, she was required to inform Five Star Direct and give it an opportunity to correct the adversity before transfer could be considered a good reason for quitting. *See* Minn. Stat. § 268.095, subd. 3(c) (providing that "the applicant 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"). Stieve's one-word rejection of the transfer notice and unauthorized departure from the work site was not a complaint that provided Five Star Direct with a reasonable opportunity to correct the purported adversity.

Stieve also disputes several of the ULJ's findings of fact, but none of her challenges impacts the determination that she quit without a good reason caused by Five

Star Direct. For example, Stieve asserts that she attempted to locate Baumann before she left Five Star Direct on December 22, whereas the ULJ found that “Stieve punched out and left the premises, without seeking out Baumann.” But it is undisputed that Stieve left without notifying Baumann or human resources. Stieve also challenges the ULJ’s finding that she originally notified another employee of her desire to reduce her hours: Stieve claims that she notified Baumann. But this alleged error, like Stieve’s other factual challenges, has no bearing on whether or not Stieve quit for a good reason caused by Five Star Direct and therefore does not provide a basis for reversal. *See* Minn. Stat. § 268.105, subd. 7(d)(5) (authorizing this court to reverse or modify a decision by the ULJ if relator’s substantial rights may have been prejudiced by findings that are unsupported by substantial evidence); Minn. R. Civ. P. 61 (stating that harmless error is to be ignored); *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, the appellant must show both error and prejudice resulting from the error).

Because the ULJ did not err in concluding that Stieve quit her employment without good reason caused by her employer, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin