

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1579**

Jessica Fisher,
Relator,

vs.

TCG, Inc., d/b/a Humera, Inginaire, Binesta and Jurisin,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed June 4, 2018
Affirmed
Reyes, Judge**

Department of Employment and Economic Development
File No. 35640209-3

Jessica Fisher, New Hope, Minnesota (pro se relator)

TCG, Inc., d/b/a Humera, Inginaire, Binesta and Jurisin, Minneapolis, Minnesota
(respondent employer)

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

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Stauber,
Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

On appeal from an unemployment-law judge (ULJ)'s determination that relator was ineligible for unemployment benefits under Minn. Stat. § 268.095 (2016) because she quit her employment, relator argues that: (1) she completed her assignment on a different date than that found by the ULJ; (2) her employer failed to comply with the statutory-notice requirement; (3) she requested an additional assignment within five calendar days of completion of her assignment; (4) she had good cause that prevented her from contacting her employer to request additional work within the five-day period; and (5) Minnesota's unemployment laws are unconstitutional. We affirm.

FACTS

Relator Jessica Fisher worked full time for respondent Humera, a temporary staffing agency, from July 18, 2016 to April 28, 2017. During that period, Humera assigned relator to work at Medica as a temporary customer-service representative. Before relator began the assignment, Humera electronically sent relator an unemployment-insurance notice (the notice) on July 5, 2016, informing her of her statutory requirement to request additional work within five calendar days of completing an assignment or risk being ineligible for unemployment benefits.

On April 26, 2017, Humera's staffing supervisor emailed and reminded her that her assignment with Medica would end on April 28, 2017, and asked whether she wanted another assignment. Relator did not respond to the email.

On or about April 30, 2017, relator established an unemployment-benefit account and applied for unemployment benefits. On April 28, an operations manager at Humera left relator a message regarding a bonus. Relator returned the call on May 4, 2017, but did not inquire about an additional assignment during the conversation. Relator requested another assignment on May 11, 2017.

On May 19, 2017, respondent Minnesota Department of Employment and Economic Development (DEED) determined relator ineligible for unemployment benefits. Relator appealed the determination, and the ULJ held a hearing on June 28, 2017. After the hearing, the ULJ determined that she is ineligible for unemployment benefits pursuant to Minn. Stat. § 268.095 because she quit her employment at Humera. Relator requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal follows.

D E C I S I O N

An applicant who quits employment during her base period is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2017). Whether an employee quit employment is a question of fact for a ULJ to determine. *Posey v. Securitas Services USA, Inc.*, 879 N.W.2d 662, 664 (Minn. App. 2016). We review findings of fact in the light most favorable to the ULJ's decision, *Wilson v. Mortg. Res. Ctr.*, 888 N.W.2d 452, 460 (Minn. 2016), and will not disturb them "as long as there is evidence that reasonably tends to sustain those findings." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We also give deference to the ULJ's credibility determinations. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014), *review denied* (Minn. July 15, 2014).

Minn. Stat. § 268.095, subd. 2(e)(1), provides that “[a]n applicant has quit employment with a staffing service if, within five calendar days after completion of a suitable job assignment from a staffing service, the applicant fails without good cause to affirmatively request an additional suitable job assignment.”

I. The ULJ did not err when it found that relator completed her assignment on April 28, 2017.

Relator disputes the ULJ’s determination that she completed her assignment at Medica on April 28, 2017, arguing that her assignment actually ended on May 9, 2017. Relator’s assertion is premised on her contention that she was paid for work from May 1 to May 5, 2017. However, the record shows no such payment, and relator did not provide any evidence to support her claim. Therefore, we are not persuaded.

Instead, the ULJ correctly found that relator’s last day of work at Humera’s client, Medica, was April 28, 2017. It noted that “[t]his was not disputed at the hearing and it is the end date [relator] provided in her unemployment insurance request for information.” And relator’s own email to Humera on May 29, 2017, noted that her assignment concluded on April 28, 2017. Ample evidence supports the ULJ’s finding that relator completed her assignment on April 28, 2017.

II. The ULJ did not err in finding that relator signed and received a copy of notice required by Minn. Stat. § 268.095, subd. 2(d).

Relator argues that Humera failed to comply with the statutory-notice requirement because she did not receive a physical copy of the notice. We disagree.

Minn. Stat. § 268.095, subd. 2(e), provides that a staffing-service employee quits employment only if the applicant “signed and was provided a copy of a separate document

written in clear and concise language” informing the applicant that unemployment benefits may be affected” when she begins her employment. Nothing in the statute requires the staffing service to provide its employees with a *physical* copy of the notice, and this court cannot read such a requirement into the statute. See *Bukkuri v. Dep’t. of Emp’t. & Econ. Dev.*, 729 N.W.2d 20, 23 (Minn. App. 2007) (stating that this court lacks authority to apply exceptions omitted from unemployment statutes); *Great River Energy v. Swedzinski*, 860 N.W.2d 362, 364 (Minn. 2015) (stating that courts do not add words to a statute). The record supports the ULJ’s findings that relator electronically signed the notice and that Humera provided an electronic copy of the notice to relator that complied with section 268.095, subdivision 2(e).

III. The ULJ did not err in finding that relator did not request an additional assignment within five calendar days of completion of her assignment at Medica.

Relator argues that the ULJ erred in determining that relator quit her employment because she requested an additional assignment within five days of completing her Medica assignment. This argument lacks merit.

Relator did not contact Humera to request an additional assignment before May 3, 2017, the final day she could make such a request under Minn. Stat. § 268.095, subd. 2(e)(1). Relator claims that she called Humera to request another assignment on April 25, 2017, and on May 1, 2017, but there is no record of contact between relator and Humera on either date. The ULJ did not err in determining that relator quit by failing to request additional work within five days after completion of her assignment at Medica.

IV. The ULJ did not err when in finding that relator did not have good cause to justify her failure to request an additional assignment.

Relator next argues that she did not quit her employment because the burn injury she allegedly sustained on May 3, 2017, was good cause that prevented her from contacting Humera to request additional work. Having good cause can justify a failure to request an additional assignment within five days of the completion of the job assignment. Minn. Stat. § 268.095, subd. 2(e)(1).

The ULJ found that relator suffered a burn on May 4, 2017, based on her testimony at the hearing. But, as the ULJ determined, this does not constitute good cause exempting relator from Minn. Stat. § 268.095, subd. 2(e)'s five-day contact requirement.

On appeal, relator now argues that the burn actually occurred on May 3, not May 4. Nothing in the record supports this contention. We are not persuaded by relator's argument, *see Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."), and therefore defer to the ULJ's findings as supported by the record.

V. Relator forfeited her argument that Minnesota's unemployment statutes are unconstitutional.

Relator now asserts that: (1) it is unconstitutional for the same ULJ to make both the initial and reconsideration decisions in the same case and (2) it is unconstitutional to apply different laws to temporary and regular employees. Relator has not provided any legal arguments or caselaw to support her argument. Therefore, she has forfeited this issue. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (appellate courts "will not consider

pro se arguments on appeal that are unsupported by either arguments or citations to legal authority”).

Affirmed.