

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0932**

Teresa Ward,
Relator,

vs.

Delta Airlines,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 4, 2022
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 44468808-3

Teresa Ward, Brooklyn Park, Minnesota (pro se relator)

Delta Airlines, St. Louis, Missouri (respondent employer)

Keri A. Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Larkin, Judge.

SYLLABUS

An employee who accepts a voluntary separation package believing that they may be subject to a layoff does not have a legally recognized good reason caused by the employer for quitting.

OPINION

WORKE, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit her employment when she accepted a voluntary separation package during the COVID-19 pandemic, which did not constitute a good reason for quitting caused by her employer. We agree with the ULJ and affirm.

FACTS

Relator Teresa Ward worked in customer service for respondent Delta Airlines for 13 years. On March 31, 2020, Ward worked her last day. Due to the COVID-19 pandemic, she was placed on a paid leave of absence. In June 2020, Delta sent employees “a voluntary leave from the company package.” Ward accepted a package, and her employment ended on July 31, 2020.

In December 2020, Ward established a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). Ward submitted that she had quit her employment after “Delta offered their employees . . . an early out or retirement package to prevent being laid off with receiving no money.” DEED issued a determination of ineligibility, concluding that Ward voluntarily quit employment because she accepted the separation package when continuing suitable work was available. Ward appealed.

At a hearing before a ULJ, Ward testified that she accepted a package that provided her \$27,000 before taxes, health insurance for two years, life insurance, and lifetime flying benefits for her and her family. Ward testified that she accepted the package because “at

least you leave with something. You at least have two years of insurance versus being laid off and not having anything and not knowing when I get a job.”

Ward testified that if employees did not accept packages, there would be forced layoffs and employees would not receive severance benefits. The ULJ asked: “Did you know if you would be one of the people who would have been forced to be laid off without a benefit package if not enough people took it?” Ward replied: “I did not know that.” She testified that Delta sent an email that included a list of all employees’ hire dates but did not disclose how many people would be laid off if others did not accept the separation package. Ward could not recall her position on the hire-date list. Ward testified that employees were later informed that 20,000 employees accepted a package, and nobody was laid off.

The ULJ determined that Ward quit employment when she accepted the voluntary separation package. The ULJ noted that an applicant who quit employment is ineligible for unemployment benefits unless an exception applies. An exception exists for an applicant who quit for a good reason caused by the employer. The ULJ decided that Ward did not quit for a good reason caused by her employer because Ward chose to separate from employment with benefits rather than face a possible future lay off with no benefits.

Ward filed a request for reconsideration. She claimed that she quit only after mounting pressure from Delta and then made the “best possible decision” because of the pandemic. The ULJ affirmed the decision. This certiorari appeal follows.

ISSUE

Did relator's voluntary acceptance of a severance package to avoid a potential layoff constitute a good reason caused by her employer to quit employment?

ANALYSIS

Ward argues that the ULJ erred in concluding that she quit her employment without a good reason caused by Delta and was therefore ineligible for unemployment benefits.

This court may remand the ULJ's decision for further proceedings, or reverse or modify it if the substantial rights of the relator 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 hearing record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2020). This court views "the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Quit employment

The ULJ determined that Ward quit her employment. Whether an employee quit is a question of fact for the ULJ. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). This court will not disturb a ULJ's findings if the evidence substantially sustains them. *Skarhus*, 721 N.W.2d at 344.

“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) (2020). “An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, has quit the employment.” *Id.*, subd. 2(c) (2020).

In her application for unemployment benefits, Ward stated that she quit after “Delta offered their employees . . . an early out or retirement package to prevent being laid off with receiving no money.” Ward claimed that she took the package “in order to receive some money [rather than] be laid off or furlough[ed] without any payments.” Thus, Ward was still employed when she decided to separate from her employment. Therefore, the evidence substantially supports the ULJ’s finding that Ward quit her employment when she voluntarily accepted the severance package.

Ineligible for unemployment benefits

Generally, an individual is ineligible for unemployment benefits if they quit their employment. *Id.*, subd. 1 (2020). But statutory exceptions to ineligibility exist. *See id.* One exception to ineligibility applies when “the applicant quit the employment because of a good reason caused by the employer.” *Id.*, subd. 1(1). “Whether an employee had good cause to quit is a question of law, which we review de novo.” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012) (quotation omitted).

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.” Minn. Stat. § 268.095, subd. 3(a) (2020). But “[n]otification of discharge in the future, including a layoff because of lack of work, is not a good reason caused by the employer for quitting.” *Id.*, subd. 3(e) (2020). And an employee who chooses to quit to take an early retirement package does not have a good reason caused by the employer for quitting. *Kehoe v. Minn. Dep’t of Econ. Sec.*, 568 N.W.2d 889, 891 (Minn. App. 1997). “An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive separation pay . . . or any other payments paid by an employer because of, upon, or after separation from employment.” Minn. Stat. § 268.085, subd. 3b(a) (2020).

Here, the ULJ decided that Ward did not have a good reason caused by Delta for quitting because she felt that it was better to separate from employment with benefits rather than face a possible future lay off with no benefits. Ward’s testimony supports this conclusion.

Ward testified that she accepted a separation package. She received \$27,000, health insurance for two years, life insurance, and lifetime flying benefits for her and her family. Ward testified that she took the package because “at least you leave with something. You at least have two years of insurance versus being laid off and not having anything and not knowing when I get a job.” This situation is similar to one in which an employee quits after notification of a future discharge. Ward described a reason for quitting that was not a good reason caused by Delta. Without an exception applying in this matter, Ward quit her employment without a good reason caused by her employer, and she was ineligible for unemployment benefits.

Relator's arguments

On appeal, Ward claims that a different statutory provision applies to her case.

Under Minn. Stat. § 268.088 (2020):

(a) An applicant who elects to become temporarily unemployed in order to avoid the layoff of another employee with the applicant's employer due to lack of work is not ineligible for benefits under the leave of absence provisions of section 268.085, subdivision 13a, nor ineligible under the quit provisions of section 268.095, if:

(1) the election is authorized under a collective bargaining agreement or written employer policy;

(2) the employer has accepted the applicant's election;

(3) the employer provides a written certification that is provided to the department that the applicant's election prevented another employee with the employer from being laid off due to lack of work; and

(4) both the applicant and the employer, at the time of the election, expect the applicant's unemployment from the employer to be temporary.

Ward claims that she accepted a separation package based on her age and years of service to "save the [c]ompany and save jobs for co-workers." However, there is no support in the record that this statute is applicable. For example, Delta did not provide a written certification to DEED that Ward's voluntary separation from employment prevented another employee from being laid off. Additionally, this argument is raised for the first time on appeal and was not considered by the ULJ. Because the ULJ was not asked to address this argument in the decision, it is not appropriately before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that reviewing court will generally consider only issues that were presented and considered below and that parties may not obtain review by raising a different theory on appeal); *Peterson v. Ne. Bank-*

Minneapolis, 805 N.W.2d 878, 883 (Minn. App. 2011) (declining to review issue not considered by ULJ).¹

DECISION

The evidence supports the ULJ's finding that Ward quit her employment. The ULJ did not err in concluding that Ward quit her employment without a good reason caused by her employer and properly concluded that Ward was ineligible for unemployment benefits.

Affirmed.

¹ For the same reason, Ward's second claim on appeal—that she quit employment due to bias and racism—is not appropriately before this court. Ward additionally challenges another decision issued by DEED. As a separate issue not addressed by the ULJ in this matter, a challenge to that other decision is also not appropriately before this court.