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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0199**

Destiny Walker,
Relator,

vs.

St. Paul Public Library,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 14, 2022
Reversed
Jesson, Judge
Dissenting, Worke, Judge**

Department of Employment and Economic Development
File No. 44905197-5

Destiny M. Walker, Winona, Minnesota (pro se relator)

St. Paul Public Library, St. Paul, Minnesota (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 Gaïtas, Presiding Judge; Worke, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

On what she thought would be her last week before a planned leave of absence, relator Destiny Walker was instead asked to sign a separation of employment by respondent St. Paul Public Library (the library). She signed the document. After two hearings, an unemployment law judge (ULJ) decided that because Walker quit, she was ineligible for employment benefits. But because the record reflects Walker was never given the opportunity to keep working, she could not have made the free-will choice to quit. Accordingly, substantial evidence does not support the ULJ's finding that Walker quit and we reverse.

FACTS

Walker, a college student at St. Mary's University in Winona, worked part-time for the library between October 2017 and August 2020. Walker worked during the summer months and took leaves of absence during the school years. Midway through summer 2020, Walker informed the library of a date to begin what she thought would be her school-year leave of absence. But during her last week, Walker's supervisor told her that she would not be able to take a leave of absence. Instead, the supervisor said Walker needed to sign a separation of employment, which she did.

Walker then applied for unemployment benefits and initially received payments. But in March 2021, Respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility, stating that Walker was not eligible for unemployment benefits because she quit her job. Her appeal of that

determination resulted in two hearings before a ULJ. In the first hearing, which the library did not attend despite contesting the award of benefits, the ULJ decided that Walker was discharged, so she could receive benefits. The library requested a second hearing.

At the second hearing, both Walker and the library participated. The library's representative explained that at the time of Walker's separation, the library had a hiring freeze due to COVID-19. As a result, they could not hold Walker's position for her while she attended school. Instead, the library needed to hire another employee to work the hours Walker had been working. The library's representative testified that Walker was highly regarded by her supervisors, and she could have chosen to keep working at the library if she wanted to. But the representative did not know if Walker was told of that choice. Walker testified that she was not offered the opportunity to continue working before signing the separation document.¹

After the second hearing, the ULJ ruled that Walker quit, so she was ineligible for unemployment benefits. Walker requested reconsideration of this order, and the ULJ affirmed the second order. Walker petitioned this court for certiorari review.

DECISION

This case asks us to decide whether the ULJ was correct in ruling that Walker quit and was not discharged. If Walker quit, then she is not eligible for unemployment benefits, but if she was discharged for reasons other than misconduct, she is eligible to receive them. *Compare* Minn. Stat. § 268.095, subd. 2(a) (2020), *with id.*, subd. 5(a) (2020).

¹ The separation-of-employment agreement is not in the record, but since neither party contests its contents, it is not material to our decision.

“Whether an employee has been discharged or voluntarily quit is a question of fact.” *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). This court will not disturb factual findings if there is evidence in the record which reasonably supports those findings. *Id.* “[W]e review findings of fact in the light most favorable to the ULJ’s decision and will rely on findings that are substantially supported by the record.” *Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (quotation omitted). Substantial evidence is relevant evidence that a reasonable mind might find adequate to support a conclusion. *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018) (citing *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970)).

An employee quits when “the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a). 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). An employee has voluntarily quit when they exercise “a free-will choice to leave the employment.” *Pose v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 665 (Minn. App. 2016). Accordingly, we turn to whether substantial evidence supports the finding that the decision to end Walker’s employment was, at the time she departed, Walker’s choice.

Here, the ULJ determined that the decision was hers stating: “Continuing work was available to her. The employer planned to fill her role if she went back to school. The date the employment ended was selected by Walker.”

But this reasoning behind the factual finding that Walker quit only holds true if, at the time of her departure, Walker *knew* that continuing work was available to her. The library's representative testified that Walker could have continued her employment rather than return to school. But no one testified Walker knew this. The testimony from the library representative follows:

ULJ: Could [Walker] have chosen to not go back to school and stay working at the library?

LIBRARY: Yes.

ULJ: Um, was that communicated to Ms. Walker?

LIBRARY: I don't know.

After this testimony, the ULJ questioned Walker:

ULJ: Okay. Um, Ms. Walker, did you have the option to continue working at the library and not return to school?

WALKER: I was not told about that option.

If an employee does not know that they have a choice whether to keep working or to leave, they cannot make the necessary free-will choice to leave employment. Minn. Stat. § 268.095, subd. 2(a). And an employee cannot quit unless the words or actions of the employer allow that employee to make a free-will choice to leave. That is what the law requires.

This court articulated the free-will-choice requirement in *Posey*. 879 N.W.2d at 665. In *Posey*, an employee took time away from work because her family was evicted and her children had chronic health problems. *Id.* at 663-64. After her employer gave her

a notice of discharge, she was denied unemployment benefits because the ULJ determined that she quit. *Id.* at 664. But this court reversed, holding that the record did not contain substantial evidence to support the ULJ's decision. *Id.* at 666. The evidence in *Posey* was lacking because the employee was never told that taking time off amounted to quitting. *Id.* at 667. Because there was no evidence that the employee made the decision to end her employment before being given the notice of discharge, this court held that she did not quit. *Id.*

These facts parallel Walker's situation. Walker asked to take time off, as she had done in years past, and was not told until the last moment that she could not take a leave of absence. Nothing in the record demonstrates that the library told Walker that she could choose to remain employed rather than take a leave of absence. Accordingly, substantial evidence does not support that she decided to end her employment entirely of her own free will. And because Walker was not given the choice whether to continue working for the library in any capacity, she was discharged. Minn. Stat. § 268.095, subd. 5(a) (stating that a discharge occurs when the words or actions of an employer lead a reasonable employee to believe that they will not be allowed to work for that employer *in any capacity*).

We are not persuaded otherwise by the fact Walker chose the date for her summer work to end under the assumption that, once again, she would receive a leave of absence. That choice, based on her status as a part-time employee, was made long before she learned that a leave would not be possible. A choice of dates made before becoming aware of the library's limited options is not "a free-will choice" to end employment. *See Posey*, 879 N.W.2d at 665. Perhaps the library guessed Walker would prefer to end her

employment (and return to school) rather than remain employed at the library. And perhaps Walker would have done so. Nothing in the record addresses this question, and Walker never stated that she would be returning to campus for in-person classes in the fall of 2020.² And an assumption cannot supplant a free-will choice.

In sum, substantial evidence does not support the ULJ's determination that Walker chose to end her employment. Rather, Walker was discharged. *See* Minn. Stat. § 268.095, subd. 5(a). She was qualified to receive unemployment benefits.

Reversed.

² We further note that during a pandemic, which was ongoing in August 2020, it is hard to predict future behavior based on past customs.

WORKE, Judge (dissenting)

As the majority recognizes, we must determine whether the ULJ correctly found that Walker quit her employment, and as a result, would be ineligible for unemployment benefits. Because I believe that the evidence supports the ULJ's factual finding that Walker quit her employment, I respectfully dissent from the majority's determination that Walker was discharged.

The law guides us to review the ULJ's determination whether an employee quit employment as a question of fact. *See Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). We “review the ULJ's factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). The evidence here reasonably tends to support the ULJ's factual finding that Walker quit her employment; that is, when she left her employment at the library to return to school, it was her decision to end the employment. *See* Minn. Stat. § 268.095, subd. 2(a) (2020).

The majority states that Walker worked at the library in St. Paul during the summer months and took a “leave of absence” to attend college in Winona during the school year. But the record shows no formal agreement, and there is no contract of employment containing a provision for “leave of absence.” In fact, this arrangement was allowed at the discretion of the employer. Thus, Walker would essentially quit at the end of each summer to attend school and assume that she could return the following summer. Walker could have continued working at the library each year she left to attend school. The library was

able to accommodate Walker's desire to leave and return in the summer, until it was not. At that point, the library was under a hiring freeze due to COVID-19. The record shows that a "leave of absence" was no longer available, but the library still needed employees, like Walker, to keep the library operational. At that point, Walker could choose to continue working, which was available to her, or quit and attend school. She chose to quit.

The majority states that "during her last week, Walker's supervisor told her that she would not be able to take a leave of absence." When this was communicated to Walker, she had a choice to stay working at the library. But she decided to go back to school in Winona. She signed a separation of employment, which stated that she was separating for "personal reasons." This document, and Walker's decision to sign it, speaks for itself. It shows that Walker could have stayed, she did not have to sign the document. It was her choice to quit working at the library in St Paul to return to school in Winona.

The employer's representative testified that Walker could have chosen to stay working at the library. The majority points out that Walker did not make a free-will choice to leave the employment because she testified that "[she] was not told" that she had this option. But the record shows that Walker made the decision to leave the employment early in the summer and communicated this to the employer. Thus, when the employer told Walker that the leave of absence was not an option in 2020, it was aware that Walker had already indicated when she planned to leave employment to return to school.

The majority likens this matter to *Posey v. Securitas Security Services USA, Inc.*, stating that "Walker asked to take time off, as she had done in years past, and was not told until the last moment that she could not take a leave of absence." See 879 N.W.2d 662

(Minn. App. 2016). But the two situations are quite different. In *Posey*, the employee did not ask for time off like Walker did here and had done in years past. *See id.* at 663-64. It was not planned, the employee abruptly was forced to address a family crisis, facing eviction and caring for her children. *Id.* And asking for “time off” to address recent homelessness is not the same as planning a “leave of absence” to move and attend school in a different part of the state. Finally, in *Posey*, the record did not demonstrate a notice of resignation showing the employee’s intent to quit. *Id.* at 666. Here, we know that Walker told her employer her last day of work and she signed a separation-of-employment document. Based on our review of observing factual findings in the light most favorable to the decision, this evidence reasonably tends to support the ULJ’s factual finding that Walker quit her employment. Accordingly, I would affirm the ULJ’s decision.