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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1818**

Michael P. Opela,  
Relator,

vs.

Forensic Building Science, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 20, 2012  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 27907573-3

Michael P. Opela, Sr., Stillwater, Minnesota (pro se relator)

Forensic Building Science, Inc., St. Paul, Minnesota (respondent employer)

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

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**ROSS**, Judge

Michael Opela appeals from an unemployment law judge's (ULJ) decision that he is ineligible to receive unemployment benefits because he quit his employment as an engineer with Forensic Building Science. Opela argues that he did not quit but that he was laid off. He also implicitly contends that he is entitled to a new evidentiary hearing because the ULJ improperly denied his request to subpoena evidence necessary to his argument. Because the ULJ had a sufficient factual basis to find that Opela quit his employment, and because the evidence Opela sought to obtain by subpoena would not have changed the outcome, we affirm.

### FACTS

Forensic Building Science (FBS) offered Michael Opela an engineering position in January 2010 contingent on a number of things, including Opela's "delivery [of] proof of Professional Engineering licensure in the State of Minnesota within 90 days of employment." Under the offer, FBS would pay Opela a \$64,500 salary plus \$400 monthly for child care and \$400 monthly for health insurance. Opela accepted the offer and began work, but he never obtained his Minnesota engineering license.

FBS soon changed Opela's title from director of engineering to director of forensic inspections. It also hired another engineer to accomplish the duties that Opela could not because of his lack of a license, and it stopped paying him the child care and health insurance stipend. Opela's failure to obtain a license in Minnesota eventually caused difficulty after one FBS client refused to work with Opela.

On April 15, 2011, FBS delivered a “Change in Work Status” letter to Opela. According to the letter, as of April 18, FBS would pay Opela a wage of \$31 hourly rather than his \$64,500 salary, his title would no longer be director of forensic inspections, FBS could not guarantee him full-time hours, and FBS would notify him weekly of his work hours for the coming week.

Opela continued to work at FBS for another month. He reported as scheduled on April 18 and worked under the changed conditions until May 12, 2011. In the weeks between April 18 and May 12, he worked an average of 36.4 hours. In his last week, he worked 47 hours. But he did not return to work after May 12.

Opela applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. The department denied his request for benefits, determining that he quit his employment by failing to show up for work. Opela appealed. A ULJ conducted an evidentiary hearing before which Opela had requested a subpoena to discover evidence that he contends would have proven that FBS was paying him less than the prevailing wage for engineers with his qualifications. The ULJ determined that Opela voluntarily left his employment and was ineligible for benefits. Opela asked the ULJ to reconsider, was denied his request, and now appeals by writ of certiorari.

### **DECISION**

Opela challenges the ULJ’s decision. We may remand, reverse, or modify a ULJ’s decision if the relator’s substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made on unlawful procedure, or arbitrary and capricious. Minn. Stat. § 268.105, subd.

7(d)(3)–(6) (2010). We review fact findings in the light most favorable to the ULJ’s decision and give deference to the ULJ’s credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Opela first argues that he did not quit. An applicant who quit employment generally is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). “A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” *Id.*, subd. 2(a) (2010). Whether an employee was discharged or quit is a fact question. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

Opela maintains that he was discharged by letter on April 15, 2011. A “discharge” occurs when an employer’s words or actions would lead a reasonable employee to believe that he is no longer allowed to work for the employer. Minn. Stat. § 268.095, subd. 5(a) (2010). We look first to FBS’s letter and then to its conduct after the letter, and we conclude that neither indicates a discharge.

The text of the April 15 letter does not support Opela’s argument that FBS discharged him. The letter does not include the words “discharge” or “termination” and its text does not imply discharge. It is captioned, “Change in Work Status Letter.” It contains only five sentences, none of which expressly indicates a termination. The first sentence informs Opela that he is “being moved from a Salary employee to an[] Hourly employee” effective three days later. The second sentence announces his new hourly pay rate of “\$31/hour.” The third sentence states that he will no longer have benefits or his previous title of “director.” The fourth informs him that he is not guaranteed full-time

work. And the fifth sentence advises him that each Friday he will be notified of the next week's work hours. Although the letter indicates less stability of employment, nothing in it would lead a reasonable employee to believe that FBS no longer allowed him to work.

FBS's conduct after the letter also does not support Opela's contention that he was terminated on April 15. FBS directed him to work on April 18, and it continued paying him the hourly equivalent of his prior \$64,500 annual salary. It assigned Opela work hours that averaged only slightly less than the 40-hour week needed to match his pay on his prior salary. The assertion that FBS terminated Opela's employment on April 15 is belied by the fact that FBS continued calling him to work and paying him for another month until Opela stopped coming in. The evidence supports the ULJ's finding that Opela quit his employment.

We recognize that Opela's hours and pay were effectively reduced, but he does not argue that this caused him to quit his job for good reason, only that he did not quit at all. And we observe that the facts would not support a claim that he quit for reasons caused by his employer because a reasonable employee would not have walked away from the job despite the unfavorable change from salaried to hourly employment.

The department concedes that the ULJ's failure to rule on Opela's request for a subpoena constitutes a denial of the request and that the ULJ should have responded expressly. But we are not persuaded that the evidence sought would have a material bearing on the issue before the ULJ. Even if Opela would have received the evidence he sought and the evidence supported his assertion that FBS paid other engineers more than it was paying him, he fails to demonstrate that this is relevant to the issue of whether he

was discharged from his job. The department notes that Opela introduced other evidence supporting the same proposition without the evidence that Opela would have sought by subpoena, and Opela does not explain why this evidence is not sufficient to establish his point. Because he has not established either the relevance of the evidence or prejudice from not being able to present it, Opela cannot establish that the decision to deny his subpoena request affected the decision.

**Affirmed.**