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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-913**

Heather S. Mueller,
Relator,

vs.

Auburn Manor,
Respondent,

Department of Employment and Economic Development

**Filed February 21, 2012
Reversed and remanded
Worke, Judge**

Department of Employment and Economic Development
File No. 25916152-3

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Auburn Manor, c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) declaring her ineligible to receive unemployment benefits. Because the ULJ failed to fully develop the record regarding relator's retaliation claim, we reverse and remand for further proceedings.

DECISION

Relator Heather S. Mueller was declared ineligible to receive unemployment benefits after a ULJ determined that she was discharged from her position as a nursing assistant at respondent-employer Auburn Manor nursing home for employment misconduct. In addition to challenging the grounds for the ULJ's decision, relator argues that she did not receive a fair hearing. In a fair hearing, the ULJ fully develops the record, assists unrepresented persons in presenting a case, and explains the procedure and the terms of the hearing. Minn. Stat. § 268.105, subd. 1(b) (2010); *see also* Minn. R. 3310.2921 (2011) ("The [ULJ] *must* ensure that relevant facts are clearly and fully developed.") (Emphasis added.) "When the reason *for* the discharge is disputed, the hearing process must allow evidence on the competing reasons and provide factual findings on the cause of discharge." *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). And under the department's rules, when a party is not represented by counsel, the ULJ should assist the party with presenting evidence. Minn. R. 3310.2921. When reviewing the decision of a ULJ, we may affirm the decision, remand

for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010).

At the evidentiary hearing, relator testified that she believed that she was terminated because she testified against respondent-employer at a former coworker's unemployment-benefits hearing. Relator asserts that the ULJ failed to develop the record regarding this argument and failed to address this issue in its decision.

Relator's argument has merit. Relator clearly expressed concern that she was terminated in retaliation for testifying against respondent-employer in a previous unemployment-benefits hearing. The ULJ failed to ask any follow-up questions and, instead, allowed cross-examination to begin. Consequently, the record is largely devoid of any detail concerning this allegation, including when the former coworker's unemployment-benefits hearing occurred and what disparate treatment relator perceived thereafter. The ULJ's failure to fully and clearly develop the relevant facts constitutes an unfair hearing. *See* Minn. Stat. § 268.105, subd. 1(b); Minn. R. 3310.2921. Therefore, we reverse and remand for a hearing on relator's retaliation claim. On remand, the ULJ shall provide factual findings on the cause of discharge. *See Scheunemann*, 562 N.W.2d at 34. Because we remand for further proceedings, we do not address relator's substantive arguments.

Reversed and remanded.