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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1642

Barbara Kay Fitz,
Relator,

vs.

Bureau of Collection Recovery, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 6, 2013
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 29679136-3

Barbara Kay Fitz, Renville, Minnesota (pro se relator)

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

U N P U B L I S H E D   O P I N I O N

WORKE, Judge

Relator challenges an unemployment-law judge (ULJ) decision that she was ineligible to receive benefits because she quit her employment, arguing that stress-induced headaches caused by her work constituted a serious illness that prevented her from working and that the ULJ did not permit her to call all of her witnesses to testify at a hearing. We affirm.

D E C I S I O N

When reviewing a ULJ decision, this court may affirm, remand, reverse, or modify the decision if the substantial rights of the relator were 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 entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010). Whether an employee voluntarily quit employment is a question of fact. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). This court views the ULJ's findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

"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)

(2010). An employee who quits employment is ineligible to receive unemployment benefits unless an exception applies. Id., subd. 1 (2010). The ULJ addressed and rejected two exceptions in reaching a decision: whether relator's working conditions constituted harassment that would compel an average, reasonable worker to quit employment, and whether relator had a serious illness that prevented her from working. Relator challenges only the second determination.

An employee may quit if the employee has a serious illness, but the quit will constitute a basis for receiving unemployment benefits only "if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*, subd. 1(7) (2010).

In March 2012, relator, who worked full time as a debt collector, began to get severe headaches, including migraines. She went to see Dr. Mark Ahlquist on April 11, and he wrote a letter stating that relator should be excused from work from April 9-14 for "medical illness" due to her headaches. Dr. Ahlquist recommended "limiting [relator's] work to four hours during the day for stress reduction" because relator's headaches were triggered by stress. But when relator was unable to return to work even part time due to her headaches, she quit employment after further consultations with her doctor. The ULJ found that:

> Because [relator] requested the part-time work before it was necessary for her to quit, because [relator] did not give [respondent employer] an opportunity to accommodate her after her condition was updated, and because [relator's] request for part-time work does not appear to be sincere as she did not ask [human resources] or complete FMLA paperwork, the requirements of section 268.095, subd. 1(7)

> are not met and the medical exception to ineligibility does not apply.

Relator asserts that although the ULJ determined that relator did not request accommodation for her medical condition, she requested "all possible accommodations, except for FMLA, which . . . did not apply."

Relator's argument depends on facts that are contrary to the facts found by the ULJ. She asserts that she contacted her immediate supervisor, Brenda McNichols, an operations manager, to advise McNichols of her medical condition and doctor's recommendations, and to request part-time work. According to relator, when she asked McNichols if she could work part time as an operator, McNichols told her that "she did not have positions available for [part-time or full-time] [o]perators." McNichols also told her that she "would not be allowed to return [part-time] as a [c]ollector." Also, according to relator, McNichols stated that "she had final say in the matter of [relator] returning to [respondent-employer] in any capacity and that there was no reason to contact Human Resources, Terry Kisling, [as] she had made her decision and it was final."

There is substantial evidence to support the ULJ's decision that relator did not request accommodation. *See Minn. Ctr. for Env'l Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002) (defining substantial evidence as "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety"). Viewing the facts in the light most favorable to the ULJ's decision, to the extent that relator requested any

accommodation, she did so before she even met with a doctor for the first time; she did not inquire of the human resources representative, Terry Kisling, about any accommodation after she received a recommendation from her doctor regarding her medical condition; and although she was familiar with the FMLA because she had used that leave for an unrelated medical condition in the months before she quit, relator did not inquire about FMLA leave for this medical condition. *See Stagg*, 796 N.W.2d at 315 (stating that this court views ULJ findings in the light most favorable to the ULJ decision). Some of these determinations are dependent on the ULJ's credibility determinations, to which this court defers. *See Skarhus*, 721 N.W.2d at 344 (stating that this court must defer to the ULJ's credibility determinations).[1] While relator argues that FMLA would not have applied because Dr. Ahlquist recommended that she leave employment because it was causing her stress-induced headaches, that conclusion reflects relator's opinion and does not ameliorate her duty to comply with the statute.

In addition, relator claims that she should have been permitted to call two additional witnesses to testify at her hearing. The first was Dr. Ahlquist, whom relator concedes may have been unavailable to testify on the date of the hearing; the second was a co-worker who purportedly listened in on a phone conversation between relator and McNichols. A ULJ "should assist unrepresented parties in the presentation of evidence[,]" Minn. R. 3310.2921 (2011), and "must ensure that relevant facts are clearly and fully developed." *Id.*; *see* Minn. Stat. § 268.105, subd. 1(b) (2010).

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[1] For example, the ULJ did not find relator's request to work part time "sincere."

The hearing transcript shows that key witnesses were permitted to testify on key issues. In the order affirming its original decision, the ULJ stated that Dr. Ahlquist's testimony was "repetitive," because it was undisputed that relator's quit was medically necessary. The ULJ also rejected relator's request to have the co-worker testify about the conversation she overheard between relator and Brenda McNichols, because it "would have been unduly repetitious." The ULJ credited relator's testimony that a phone conversation occurred between relator and McNichols at which relator asked McNichols if she could work part time. Under these circumstances, the ULJ did not abuse his discretion by ruling to exclude the testimony of these witnesses.

Affirmed.