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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1699**

Parents in Community Action Inc.,
Relator,

vs.

Dawn Byrd,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 2, 2008
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 7769 07

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Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

By writ of certiorari, relator challenges the decision of an unemployment-law judge (ULJ) to not reconsider a decision that respondent had good cause to quit where relator did not show good cause for failing to participate in a scheduled evidentiary hearing. Because relator failed to participate in the evidentiary hearing without good cause, we affirm.

FACTS

Respondent Dawn Byrd was employed by relator Parents in Community Action, Inc., (PICA) as an accounts payable clerk. On March 21, 2007, Byrd's supervisor gave her a written reprimand for inattention to detail. On March 27, Byrd tendered her resignation, stating that she felt the written reprimand was unwarranted and harassing. Byrd made no mention of allegations of sexual harassment in her letter of resignation, exit interview with PICA, or initial application for unemployment benefits. After Byrd submitted her initial application for benefits, she submitted a supplemental letter alleging sexual harassment. PICA submitted a written response denying Byrd's sexual harassment allegations.

On May 8, 2007, respondent Department of Employment and Economic Development (DEED) denied Byrd's application for unemployment benefits. Byrd appealed that determination, and an evidentiary hearing was scheduled for June 12. On June 11, Ann Thunder, PICA's director of finance, contacted DEED to request a continuance on the basis that she had just received the exhibits from PICA's human

resources director. The request was denied. On June 12, the ULJ telephoned PICA five separate times in attempts to reach Thunder or Leslie Ann Karos, PICA's director of human resources. The ULJ left instructions for both Thunder and Karos that they needed to contact the ULJ's office before 1:30 p.m., if PICA wished to participate in the hearing.¹ No one participated in the hearing on PICA's behalf. The ULJ reversed DEED's denial of Byrd's application for benefits, finding that Byrd had good cause to quit caused by her employer.

PICA submitted a request for reconsideration and argued that it had good cause for failing to participate in the hearing because

(1) PICA leadership was told by [DEED] that it was not necessary to participate in the hearing and that submitting a written response was sufficient; (2) PICA has customarily not participated in such hearings and in the past has relied exclusively on the submission of written materials and documents; (3) PICA did not anticipate that its former employee would raise accusations of sexual harassment, because such accusations are false and unsupported.

The ULJ affirmed the findings of fact and decision issued on June 15, 2007, concluding that "[PICA had] not shown 'good cause' for missing that hearing." In the memorandum included with the Order of Affirmation issued on August 7, 2007, the ULJ noted that in its request for reconsideration, PICA "failed to provide any statement from Ann Thunder in support of the allegation that someone she spoke with from [Unemployment Insurance] (UI) Legal Affairs directed [PICA] not to attend the hearing and failed to identify [DEED] personnel they contend advised her it was not necessary to

¹ Although the hearing was scheduled to begin at 1:00 p.m., the ULJ's last attempt to contact someone from PICA was made after 1:19 p.m.

participate in the hearing.” The ULJ noted that “UI Legal Affairs maintains records of [DEED] employee’s contacts with parties and no record indicating any such instruction was found,” although “[a] contact is noted denying Ann Thunder’s request to reset the hearing.” The ULJ further noted that Thunder had advised DEED personnel that she received the exhibits. The ULJ further noted that “[t]he instruction on the front of the document containing the evidence gathered by [DEED] specifically advises parties, ‘If you fail to participate in the scheduled hearing, you may be prevented from appealing further unless you have a compelling reason for not participating.’”

As to PICA’s argument that it was not aware Byrd would raise allegations of sexual harassment, the ULJ stated that PICA’s claim “is directly contradicted by the ‘Determination of Disqualification’ dated May 8, 2007 which specifically states in the Findings: ‘The applicant alleged that sexual harassment caused the applicant to quit this employment.’” Moreover, the ULJ notes that “[t]he copy of the evidence gathered by [DEED] and that was provided to the parties prior to the hearing outlined Byrd’s complaint of sexual harassment, identified instances of harassment and identified the individual, Prem Motieram, she contended harassed her.” This appeal follows.

D E C I S I O N

This court may affirm the ULJ’s decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights “may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law” or “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2006).

PICA argues that it demonstrated good cause for not participating in the hearing and that the contrary finding by the ULJ was based on an abuse of discretion.

After an adverse decision by a ULJ, a relator may file a request for reconsideration. Minn. Stat. § 268.105, subd. 2(d) (2006).

If the involved applicant or involved employer who filed the request for reconsideration failed to participate in the evidentiary hearing[,] . . . an order setting aside the findings of fact and decision and directing that an additional evidentiary hearing be conducted must be issued if the party who failed to participate had good cause for failing to do so.

Id. “Good cause” is “a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.* “A reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni’s, Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006); *see also Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d 28, 30 (Minn. App. 1994) (deferring to commissioner’s discretion not to remand for new hearing before referee when party failed to submit testimony at first hearing under earlier version of law).

PICA argues that it showed good cause for its failure to participate in the hearing when it reported that a DEED official had informed PICA that its participation in the hearing was not necessary because PICA had submitted written responses. PICA argues such a statement from a DEED official would prevent a reasonable person from participating in the hearing.

PICA relies on an unpublished decision of this court, *Megas v. A & M Bus. Interior Servs., LLC*, No. A06-1287, 2007 WL 1470478 (Minn. App. May 22, 2007), as support for its argument that its request for reconsideration should not have been denied because it failed to submit evidence to support its request. Even if the unpublished *Megas* decision were precedent upon which PICA could rely, the decision does not support PICA's argument. In *Megas*, the relator argued that his hospitalization for an asthma attack gave him good cause for failing to participate in a hearing and that his request for reconsideration had been denied because he had failed to submit documentation reflecting his hospitalization. 2007 WL 1470478 at *1-2. But we specifically pointed out that "the ULJ did not indicate that a lack of documentation of relator's hospitalization was the basis for the decision." *Id.* at *2. We remanded because the record indicated that relator adhered to the process prescribed in Minn. Stat. § 268.105, subd. 2(d) (Supp. 2005). In any event, as an unpublished decision, *Megas* is not precedential. Minn. Stat. § 480A.08, subd. 3 (2006).

PICA also argues that it is entitled to a new evidentiary hearing because DEED's denial of its request for a continuance on June 11, 2007, was improper. We reject this argument for two reasons. First, PICA did not make this argument to the ULJ, raising it for the first time by writ of certiorari. As such, the argument is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will generally not consider matters not argued and considered in the court below). Second, PICA fails to cite any authority to support its argument that a denial of a request for

continuance under these circumstances constitutes good cause for failure to participate in a hearing.

The ULJ found no evidence that DEED personnel had advised PICA that its participation in the evidentiary hearing was unnecessary or that PICA was unaware of Byrd's claim of sexual harassment prior to the evidentiary hearing. Because the ULJ's decision is supported by substantial evidence, is not affected by an error of law, and is not based on an abuse of discretion, we affirm.

Affirmed.