

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0368**

Troy Gates,
Relator,

vs.

Advanced Web Technologies, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 10, 2022
Reversed and remanded
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 43568701-3

Steven Anderson, St. Paul, Minnesota (for relator)

Advanced Web Technologies, Inc., Minneapolis, 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 Smith, Tracy M., Presiding Judge; Gaïtas, Judge; and
Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Troy Gates challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his job and does not meet a statutory exception to ineligibility based on a quit. Gates argues that (1) there was not substantial evidence to support the ULJ's finding that Gates did not request an accommodation before quitting to seek treatment for his chemical dependency and (2) the ULJ failed to adequately assist Gates in developing the record at the evidentiary hearing.

Because we conclude that Gates was not properly assisted in developing the record, we reverse and remand for an additional hearing.

FACTS

Gates was employed with respondent Advanced Web Technologies, Inc. (AWT) for over 20 years until he quit his employment in October 2020. In 2017, Gates took a leave of absence to complete a 28-day inpatient treatment program for alcohol addiction. Gates returned to work at AWT and remained sober for twenty months, but, due to the pandemic, Gates's AA meetings became virtual and he attended with less frequency, leading to a relapse in July 2020. Although he continued working at AWT, Gates struggled with his chemical dependency, and, in October 2020, he quit his job to return to an inpatient-treatment program.

Gates applied for unemployment benefits. In a request for information from respondent Minnesota Department of Employment and Economic Development (DEED), Gates was asked whether he had "request[ed] accommodation, such as a leave of absence

or a change in job duties or hours of work.” He answered, “No,” and explained that he did not do so “because non [sic] of those would have helped in [his] situation.” Based on Gates’s responses to the request for information, DEED determined that Gates was ineligible for unemployment benefits because he did not request an accommodation. Gates appealed.

A ULJ held a telephonic evidentiary hearing on December 2, 2020. Gates appeared without legal representation. His significant other was his only witness besides himself. No one from AWT appeared. The ULJ twice tried to reach AWT by phone to determine whether anyone would be attending, but without success.

At the beginning of the hearing, Gates said that he was missing some exhibits and was unsure if he had received the mailed packet of information from DEED. However, he did not object to any exhibits being included in the record, including his responses to the request for information. Unbeknownst to the ULJ and presumably to Gates, a statement from AWT was missing from the record. As DEED has since explained to this court, AWT’s HR representative had sent a statement that was received by DEED on November 24, 2020, but that was not scanned into the system until December 4, 2020—two days after the hearing. In it, the HR representative stated that Gates was a valued employee, that he quit “for medical reasons,” and that she had called DEED multiple times attempting to inform DEED of her scheduling conflict with the December 2, 2020 hearing but that she could not get through on DEED’s phone line.

At the hearing, when the ULJ asked whether he had requested an accommodation before quitting, Gates testified that he had talked to AWT’s HR representative about taking

a leave of absence but that he was told that he could not take a leave because no one else could do his job. The ULJ questioned Gates about the apparent inconsistency between this testimony and his response to DEED's request for information. Gates became somewhat flustered, and the ULJ agreed to take a short break. When the hearing resumed, the ULJ asked whether Gates had any information to add, and Gates said, "I, I tried to communicate to HR that I was not able to continue working." The ULJ responded, "I want to move on here," and turned to Gates's witness for her testimony. At the end of the hearing, the ULJ asked Gates if there was anything he would like to add, and Gates said there was not.

In a written decision, the ULJ concluded that Gates was ineligible for employment benefits, finding that Gates did not request an accommodation because Gates "did not think anyone else could do his job." Further, the ULJ found Gates's testimony not "convincing" because it was inconsistent with his response to the request for information and because the ULJ found it unlikely that an HR representative "would tell Gates he was not able to take a leave of absence . . . when he had previously been allowed to do so three years earlier."

Gates requested reconsideration of the ULJ's decision and an additional hearing. The ULJ considering this request affirmed the decision, concluding that the fact that Gates was unrepresented at the hearing did not change the outcome of the case, that the ULJ did assist Gates with the presentation of evidence, and that the statement from AWT's HR representative—which had since come to light—would not have changed the outcome of the case.

Gates appeals by writ of certiorari.

DECISION

We “may affirm the decision of the [ULJ] or remand the case for further proceedings; or [we] may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced” for multiple reasons, including “unlawful procedure,” “other error of law,” lack of “substantial evidence,” or arbitrariness or capriciousness. *See* Minn. Stat. § 268.105, subd. 7(d) (2020).

On a request for reconsideration, a ULJ must order an additional hearing “if a party shows that evidence which was not submitted at the hearing” “would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence.” Minn. Stat. § 268.105, subd. 2(c) (2020). We will “not reverse a ULJ’s decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion.” *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010).

Generally, an individual is ineligible for unemployment benefits if they quit their employment. Minn. Stat. § 268.095, subd. 1 (2020). However, an individual who quits because their “serious illness or injury made it medically necessary” to quit is eligible for unemployment benefits if the individual “informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*, subd. 1(7).¹ Gates’s eligibility for unemployment benefits turned on whether he requested an accommodation.

¹ If the individual’s serious illness is chemical dependency, this exception does not apply if the individual was previously diagnosed or treated for chemical dependency and “since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.” Minn. Stat. § 268.095, subd. 1(7). In the decision denying reconsideration,

The ULJ denied Gates’s request for reconsideration and a new hearing, concluding that the statement by AWT that was received by DEED but omitted from the record would not have changed the outcome of the decision because “[w]hether the employer feels an applicant should receive unemployment benefits is not relevant.”

It is true that the statement—in which AWT notified DEED that it had a conflict with the scheduled date for the evidentiary hearing—does not specify what the HR representative intended to testify to at the hearing. Thus, we cannot conclude that the ULJ’s determination regarding the impact of that statement itself on the outcome was erroneous.

But the statement indicated that the employer had tried multiple times to reach DEED because of a scheduling conflict for the evidentiary hearing but DEED’s phone line was never available. And DEED had received the statement, but, because it did not scan the statement into the electronic record for ten days, the statement did not make it into the record at the hearing. The employer’s statement indicated a need to reschedule the hearing due to a scheduling conflict. By Minnesota rule, the hearing should have been rescheduled. *See* Minn. R. 3310.2908, subp. 1 (2019) (“A hearing must be rescheduled based on a party’s need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to participate due to illness, or other compelling reasons beyond the control of the party that prevent participation at the originally scheduled time.”).

the ULJ found for the first time that Gates was “not making consistent efforts to control his chemical dependency after he relapsed in July 2020.” On appeal, DEED concedes that this finding was not supported by substantial evidence, and we agree. Therefore, we focus on the issue of a request for accommodation.

And, also by Minnesota rule, the ULJ “must assist all parties in the presentation of evidence” and “must ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2019); *see also Thompson v. County of Hennepin*, 660 N.W.2d 157, 161 (Minn. App. 2003) (stating that, under the previous version of the rule, ULJs “have a duty to reasonably assist pro se parties with the presentation of the evidence and the proper development of the record”). Because these rules were not met, the ULJ’s decision was made based upon an unlawful procedure. The ULJ therefore abused his discretion by failing to grant Gates a new hearing.

DEED argues that Gates could have brought the HR representative as a witness, subpoenaed her, or objected to continuing the hearing without AWT. But Gates was an unrepresented party, and the ULJ was under a duty to assist him with the full development of the record. In the particular circumstances of this case, we conclude that that duty was not met. We therefore reverse and remand for a new hearing.²

Reversed and remanded.

² Because it is unnecessary to do so, we do not reach Gates’s argument that the record as presently constituted does not substantially support the ULJ’s factual findings or his other arguments of procedural error.