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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1367

Maureen McCulloch,
Relator,

vs.

William K. Swanstrom,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 1, 2022
Affirmed
Cochran, Judge

Department of Employment and Economic Development
File No. 45281728-3

Thomas H. Boyd, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for relator)

William K. Swanstrom, Duluth, Minnesota (respondent employer)

Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Reilly, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit her employment and does not meet a statutory exception to ineligibility based on a quit. Relator argues that the ULJ erred by (1) determining that she was not eligible for state unemployment benefits under the medical-necessity exception; (2) failing to grant her benefits for equitable reasons; and (3) failing to consider whether she was eligible for federal pandemic-related benefits even if she was not otherwise eligible to receive state unemployment benefits.

We first conclude that the ULJ did not err in determining that the medical-necessity exception was not satisfied in this case. We next conclude that reversal is not permitted on equitable grounds. Finally, we conclude that the issue of relator's eligibility for federal pandemic-related benefits is not properly before us. We therefore affirm.

FACTS

Relator Maureen McCulloch was employed full time as a care provider for respondent-employer William Swanstrom from November 2019 through February 16, 2020. McCulloch quit her employment in February 2020. McCulloch's reason for quitting was to move to Connecticut to care for her mother. She did not ask Swanstrom for time off or another accommodation before she quit.

McCulloch applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED). In March 2021, a DEED administrative clerk issued a determination of ineligibility. The determination

stated that McCulloch was ineligible for unemployment benefits because she quit her employment "to relocate for personal reasons" and did not meet any of the statutory exceptions. McCulloch appealed the determination of ineligibility, and a de novo hearing was held before a ULJ in May 2021.

At the hearing, McCulloch elaborated on her reason for quitting her employment. McCulloch testified that her father had passed away earlier in the year, and she wanted to relocate to assist her mother, who was "elderly," in anticipation of the impeding COVID-19 pandemic. McCulloch acknowledged that her mother did not have a specific medical condition that required care, but she said that she was moving to be her mother's "personal assistant to the outside world." She testified that her mother needed "assistance and care at the home so she didn't have to leave." McCulloch indicated that she would have relocated to Connecticut even if there were not concerns about the impending pandemic.

After the evidentiary hearing, the ULJ issued findings of fact and a decision, determining that McCulloch was ineligible for unemployment benefits because she quit her employment and no statutory exception applied. The ULJ considered the medical-necessity exception under Minn. Stat. § 268.095, subd. 1(7) (2020). The ULJ determined that McCulloch did not meet the requirements of that exception because the record did not show that McCulloch's mother had any specific medical condition or that it was medically necessary for McCulloch to care for her mother. The ULJ also found the medical-necessity exception was not met because McCulloch did not request an accommodation from Swanstrom before she quit. The decision resulted in McCulloch

being charged with an overpayment in the amount of $8,970 for unemployment benefits she had received prior to the decision.

McCulloch requested reconsideration. She argued that it was medically necessary for her to care for her mother because of the impending pandemic. McCulloch asserted that her mother was 72 years old at the time, had "a history of pneumonia, asthma[,] and high blood pressure," and was "crippled with fear" because of the media's reporting on the COVID-19 virus. McCulloch also stated that she was following expert medical recommendations by choosing to care for her mother, who was "medically compromised."

The ULJ affirmed the earlier decision. The ULJ noted that, in support of her request for reconsideration, McCulloch sought to submit evidence that she did not present at the time of the hearing. The ULJ declined to receive the additional evidence into the record, determining that there was no good reason McCulloch could not have presented it at the hearing. The ULJ also determined that the evidence would not likely change the outcome of the decision. Accordingly, the ULJ concluded that the decision was factually and legally correct.

McCulloch appeals by writ of certiorari.

DECISION

McCulloch challenges the ULJ's decision determining that she is ineligible for unemployment benefits. When reviewing the ULJ's decision, we may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2020). Alternatively, we may reverse or modify the ULJ's decision when the relator has been

prejudiced because the decision, among other things, is affected by an error of law or not supported by substantial evidence in the record. *Id.*, subd. 7(d)(4)-(5).

We review the ULJ's factual findings in the light most favorable to the decision. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We will not disturb those findings "as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether the ULJ's findings show that the applicant meets a statutory exception to ineligibility for quitting employment is a question of law, which we review de novo. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000) (applying de novo review to determine whether applicant met exception for good reason to quit caused by employer).

McCulloch argues that the ULJ erred by: (1) determining that she did not satisfy the medical-necessity exception; (2) determining that she was ineligible for benefits despite there being an equitable reason for granting benefits—her reliance on the ULJ's statement in a previous decision involving a different employer; and (3) failing to consider whether she was eligible for federal pandemic-related benefits even if she was not eligible for state unemployment benefits. We address each argument in turn.

I. The record supports the ULJ's determination that McCulloch did not satisfy the medical-necessity exception.

An applicant who quits employment is ineligible for unemployment benefits unless an enumerated statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2020). The only exception at issue here is the medical-necessity exception. *Id.*, subd. 1(7). To satisfy the medical-necessity exception based on care for a family member, an applicant must meet

two requirements: (1) the applicant quit employment "in order to provide necessary care because of the *illness, injury, or disability* of an immediate family member of the applicant"; and (2) "the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*, subd. 1(7)(ii) (emphasis added). The ULJ determined that McCulloch did not satisfy either requirement. McCulloch argues that the ULJ erred by concluding the medical-necessity exception was not met. We are not persuaded.

Evidentiary Record on Review

We begin our analysis by addressing what evidence we may properly consider in our review of the ULJ's determination that the medical-necessity exception was not met. In her brief, McCulloch asserts that her mother had a "disability," within the meaning of the exception, because her mother was 72 years old, had high blood pressure and a history of asthma, and was fearful of the impending pandemic. But McCulloch did not present any evidence of these facts at the hearing before the ULJ. Instead, she first submitted this evidence in her request for reconsideration. In deciding the request for reconsideration, the ULJ declined to receive the additional evidence into the record and affirmed the previous decision based on the evidence submitted at the hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2020) ("In deciding a request for reconsideration, the unemployment law judge must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing.").[1] The evidence that McCulloch

[1] McCulloch does not challenge the ULJ's decision declining to hold an additional hearing on her request for reconsideration.

presented in support of her request for reconsideration is not part of the record on which we must base our review of the ULJ's determination that the medical-necessity exception was not met, and we do not consider it. *See Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990) ("[E]vidence which was not received below may not be reviewed as part of the record on appeal."). For this reason, we limit our review of the record to the evidence developed at the hearing.

Evidence of Illness, Injury, or Disability

When we consider the evidence that was before the ULJ at the hearing, we conclude that the record supports the ULJ's finding that McCulloch's mother did not have an illness, injury, or disability that made it medically necessary for McCulloch to quit to provide care for her mother. At the hearing, McCulloch expressly acknowledged that her mother did *not* have a specific medical condition that required care. Rather, according to McCulloch, her mother needed assistance because she was "elderly" and was concerned about the impending pandemic. McCulloch seems to argue that being "elderly" equates with having a "disability." We disagree.

The term "disability" as used in the medical-necessity exception is not defined in the statute, but one common meaning of the term is "a physical or mental impairment that interferes with or prevents normal achievement in a particular area." *The American Heritage Dictionary of the English Language* 513 (5th ed. 2018); *see also Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 173 (Minn. 2021) (recognizing that, when a statute does not define a term, appellate courts may refer to dictionary definitions to determine plain meaning). Although people who are elderly often suffer from physical or mental

impairments that limit their mobility, we are aware of no case law supporting the position that growing older constitutes a per se disability. And, as a matter of common experience, people may be able-bodied even in old age. Consequently, McCulloch's testimony does not establish that her mother had an "illness, injury, or disability," within the meaning of the medical-necessity exception. McCulloch cannot satisfy the first requirement of the exception.[2]

Evidence of a Request for an Accommodation

McCulloch also cannot satisfy the second requirement of the medical-necessity exception, which requires that she requested an accommodation before quitting. McCulloch acknowledged at the hearing before the ULJ that she did not ask Swanstrom for time off or another accommodation. But she argues on appeal that she should still meet the medical-necessity exception because it would have been futile to request an accommodation.

McCulloch's position is inconsistent with the plain language of the statute and this court's case law. The statute provides that the medical-necessity exception "*only applies if* the applicant informs the employer of the medical problem and requests accommodation." Minn. Stat. § 268.095, subd. 1(7) (emphasis added). Nothing in the

[2] We note that, even if we considered the evidence that McCulloch first submitted with her request for reconsideration, we question whether she would satisfy this requirement of the medical-necessity exception. The additional evidence McCulloch submitted did not show that her mother had a specific physical or mental impairment that rendered her disabled. We are hesitant to interpret the statute so broadly as to mean that an immediate family member has a "disability" based merely on old age, general fearfulness of the pandemic, and underlying conditions that make her more susceptible to illness.

language of the statute suggests that an applicant is excused from requesting an accommodation before quitting even in circumstances in which it is highly unlikely that an employer would have granted an accommodation. While we acknowledge that a request for an accommodation in this case may have been futile, we are not free to disregard the requirement that an applicant request an accommodation. Appellate courts cannot add words to an unambiguous statute. *County of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013).

Moreover, in prior nonprecedential cases, we have rejected arguments similar to McCulloch's. *See Cripe-Scherek v. MNKase LLC*, No. A14-1320, 2014 WL 7237386, at *2 (Minn. App. Dec. 22, 2014) (stating that a request for accommodation "is a prerequisite to the application of the medical-necessity exception" and that the statute "does not leave room for a reasonableness exception"); *Fleming v. G&G Septic, LLC*, No. A10-226, 2010 WL 4941614, at *2 (Minn. App. Dec. 7, 2010) (rejecting relator's argument that requesting an accommodation was "pointless" because he was going to be laid off soon, and stating that the plain language of the medical-necessity exception required an applicant to request an accommodation). While not precedential, the reasoning in these cases is persuasive. *See Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 559 (Minn. App. 2018) (recognizing that unpublished opinions are not precedential but may be persuasive). Because McCulloch did not actually ask Swanstrom for an accommodation—even if doing so would have been futile—she does not satisfy the second requirement of the medical-necessity exception.

We recognize that McCulloch put the needs of her family first in choosing to care for her mother. It is certainly reasonable for a person to want to quit their employment to provide assistance to a family member in circumstances like these. But the question before us is whether McCulloch meets the criteria in the unemployment-benefits statute, and in doing so, we are bound by the language of the statute. The medical-necessity exception does not contemplate a situation like this one in which the applicant quits employment to provide care to an immediate family member to *prevent* that person from sustaining an illness, even in the face of an impending pandemic. Applying the statute as it is written, we conclude that the ULJ did not err by determining that McCulloch does not satisfy the requirements of the medical-necessity exception.

II. McCulloch is not eligible for unemployment benefits on equitable grounds based on her reliance on the ULJ's decision involving a different employer.

McCulloch also seems to argue that it would be inequitable to deny her unemployment benefits given her reliance on a previous ULJ decision regarding her part-time employment with another employer, Heartland PCA. McCulloch worked part time for Heartland as a personal-care assistant while she was working full time for Swanstrom. She quit her employment with Heartland on February 29, 2020, in anticipation of her move to Connecticut, and later applied for unemployment benefits arising from her separation from Heartland. In July 2020, a DEED administrative clerk issued a determination of ineligibility in the case file involving Heartland.[3] After an evidentiary

[3] Because McCulloch worked for two employers before quitting, DEED issued separate determinations for each employer—Heartland and Swanstrom—and those determinations came several months apart. According to DEED, the reason separate determinations were

hearing on that matter, a ULJ issued a decision on October 27, 2020. In that decision, the ULJ determined that McCulloch potentially met the statutory exception for eligibility under Minn. Stat. § 268.095, subd. 1(5), which applies to a part-time applicant who also had full-time employment in the "base period" sufficient to meet the minimum requirements to establish a benefit account *and* the applicant separated from full-time employment because of reasons that would not make the applicant ineligible. The Heartland decision further specified that "McCulloch is eligible for unemployment benefits *if* she meets all other eligibility requirements." (Emphasis added.)

On appeal, McCulloch argues that she "relied on" the Heartland determination and continued to collect benefits until the ULJ determined that she was ineligible for unemployment benefits in the current case involving Swanstrom. Given her reliance on the prior decision, she argues that the ULJ erred by determining that she was ineligible for unemployment benefits in this case. We are not persuaded.

Minnesota unemployment law does not permit a ULJ to grant benefits or determine eligibility based on equitable reasons. The legislature has expressly provided that "[t]here is no equitable or common law denial or allowance of unemployment benefits." Minn. Stat. § 268.069, subd. 3 (2020). Allowing for benefits based on reliance on the Heartland decision would be an equitable remedy and therefore is not permitted. Moreover, as noted

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issued is that, when McCulloch first applied for unemployment benefits, she listed Heartland as an employer but did not include Swanstrom. According to McCulloch, she did not originally include her employment with Swanstrom because the wage information for her employment with Swanstrom was not requested until June 2020. When her employment with Swanstrom was eventually reported, McCulloch learned that she was potentially eligible for additional unemployment benefits based on that employment.

above, the Heartland decision did not guarantee benefits but stated that McCulloch "is eligible for unemployment benefits *if* she meets *all other* eligibility requirements." (Emphasis added.) This language indicated that McCulloch's eligibility for unemployment benefits was not definite, but rather was contingent on her meeting other eligibility requirements. McCulloch is not entitled to employment benefits based on her reliance on the decision in the Heartland case file.

III. The issue of McCulloch's eligibility for federal pandemic-related benefits is not properly before this court.

Finally, McCulloch argues that the ULJ erred by failing to consider whether she was eligible for federal pandemic-related benefits under the Pandemic Unemployment Assistance (PUA) program. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorized PUA payments if an individual was "not eligible for regular compensation or extended benefits under State or Federal law," and the individual was "otherwise able to work and available for work" but was unemployed because of one of several pandemic-related reasons. 15 U.S.C. § 9021(a)(3)(A) (2020). McCulloch argues that she met the eligibility requirements for PUA benefits, and she urges us to remand with instructions for the ULJ to consider the amount of PUA benefits to which she was entitled.

DEED argues that McCulloch's eligibility for PUA benefits is not properly before this court because the issue was not decided below. We agree. This court generally does not consider issues that were not presented and considered before the ULJ. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Peterson v. Ne. Bank—Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* in unemployment-benefits appeal and declining

to review an issue that a party failed to raise before the ULJ). McCulloch did not raise the issue of PUA benefits at the hearing before the ULJ or in her request for reconsideration, and the ULJ did not decide the issue. DEED also asserts in its brief that "[a] separate, appealable determination regarding McCulloch's eligibility for PUA benefits was mailed to McCulloch," and that McCulloch could appeal that determination if she disagreed with it. Thus, McCulloch may properly address the issue of PUA benefits through the appropriate appeal process in that proceeding.

Affirmed.