STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0498

Cleo K. Clemmer,
Relator,

vs.

The Cook Hospital,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 31, 2022
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 48079264-3

Samuel J. Logterman, Kyle R. Kroll, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for relator)

The Cook Hospital, Cook, Minnesota (respondent employer)

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

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator challenges a decision by an unemployment law judge (ULJ) that she was ineligible for unemployment benefits, arguing that the ULJ erred in concluding that she did not have a good reason to quit caused by her employer and that it was not medically necessary for her to quit. Relator also argues that she did not receive a fair hearing because the ULJ failed to fully develop the record and declined to issue subpoenas. We affirm.

FACTS

In November 2019, relator Cleo Clemmer began working full time as a housekeeper for respondent The Cook Hospital. Clemmer primarily worked the afternoon shift. But she was "hired for all shifts" and would occasionally work other shifts as needed.

In March 2020, in response to the COVID-19 pandemic, Cook Hospital implemented a policy that required all employees to wear personal protective gear, including masks, any time they entered the building. Clemmer struggled with the mask policy because she has emphysema and found it difficult to breathe while wearing a mask. According to Clemmer, she would sometimes pull her mask down below her nose and mouth during her shifts when she was not within six feet of another person in order to make it easier to breathe.

In August 2021, Clemmer was informed that she would be moved to the morning shift. Clemmer did not want to move to the morning shift because she would have to wear her mask "all the time." She later met with human resources and expressed her concerns about wearing a mask due to her health issues. Human resources told Clemmer that she

could take additional breaks throughout her shift to rest and try different masks or face shields. Clemmer tried using a face shield, but her job as a housekeeper required her to bend over frequently and the face shield would fall off when she bent over.

Clemmer was officially moved to the morning shift on October 12, 2021, due to staffing shortages. That same day, Clemmer notified Cook Hospital of her intention to quit her employment effective October 22, 2021, because she "can't wear [a] mask for a full eight hours" due to her emphysema, and since there are "more people around in a morning shift," she would not have enough reprieve from wearing a mask. Although Clemmer's intended last day was October 22, she was later observed wearing her mask below her nose and mouth as she prepared to enter a patient's room. As a result, Cook Hospital "made [Clemmer's] two-week notice effective immediately" due to her failure to follow the hospital's mask policy.

Clemmer established an unemployment benefit account with respondent Minnesota Department of Employment and Economic Development (department), and a department representative issued a determination that Clemmer was eligible for unemployment benefits because she quit for a good reason caused by her employer. Cook Hospital appealed that determination, and a de novo hearing was conducted. At the hearing, Clemmer, who was pro se, acknowledged that when she complained to her employer about her difficulty with wearing a mask, her employer advised her to take more breaks and provided her with a smaller face shield. But according to Clemmer, she never tried the different face shield. Clemmer also admitted that her doctor never told her that she should not wear a mask. And Clemmer testified that her doctor refused to fill out a medical

statement exempting her from the mask policy because "[h]e didn't feel that . . . [Clemmer] had any medical issue that would . . . interfere with [her] work."

Following the hearing, the ULJ determined that Clemmer was ineligible for unemployment benefits because (1) she quit her job without good reason caused by her employer, and (2) "[i]t was not medically necessary for Clemmer to quit." Clemmer requested reconsideration and the ULJ affirmed the decision. This certiorari appeal follows.

DECISION

I.

Clemmer challenges the ULJ's decision that she is ineligible for unemployment benefits. When reviewing such a 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 is reviewed 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).

"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) (2020). "An applicant who quit[s] employment is ineligible for all unemployment benefits" unless he or she qualifies under one of the enumerated exceptions to ineligibility. *Id.*, subd. 1 (2020). One exception to ineligibility for unemployment benefits is if an applicant quit employment because of a good reason caused by the employer. *Id.*, subd. 1(1). Another exception is the medical-necessity exception. *Id.*, subd. 1(7). The ULJ here determined that Clemmer failed to satisfy either exception. Clemmer challenges this decision.

A. Clemmer did not have a good reason to quit caused by her employer.

"What constitutes good reason caused by the employer is defined exclusively by statute." *Rootes v. Wal-Mart Assocs., Inc.*, 669 N.W.2d 416, 418 (Minn. App. 2003). A good reason caused by the employer is "a reason: (1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment." Minn. Stat. § 268.095, subd. 3(a) (2020). "If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be a good reason caused by the employer for quitting." *Id.*, subd. 3(c) (2020).

This court has determined that "[g]ood cause to quit is generally found where an employer has breached the terms of an employment agreement." *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 553 (Minn. App. 2003) (quotation omitted), *rev. denied* (Minn. Sept. 24, 2003). But as the ULJ found, "Clemmer was never promised she would only work afternoon shifts." The ULJ also found that, after Clemmer told her employer about her difficulties with wearing a mask, Cook Hospital "offered Clemmer reasonable accommodations including taking extra breaks and the opportunity to try different types of face coverings." And the ULJ found that "Clemmer did not have a medical condition that prevented her from complying with [Cook Hospital's] mask policy." Thus, the ULJ concluded that "Clemmer did not quit her employment for a good reason caused by the employer."

Clemmer argues that evidence in the record supports a finding that she and Cook Hospital "had an implicit, if not explicit, understanding that . . . Clemmer would not have to remain masked for her entire shift," and that "[t]his agreement took the form of allowing . . . Clemmer to primarily work the afternoon shift, where she could work with her mask down when no one was within six feet of her." She claims that the "record shows that . . . Clemmer and Cook [Hospital] entered into [this] agreement during the course of her employment *after* the pandemic began," and that Cook Hospital breached this agreement by moving her to the morning shift, which resulted in an adverse working condition. (Emphasis added.) Clemmer argues that, because Cook Hospital failed to offer a reasonable accommodation, the hospital's breach constituted a good reason for quitting.

To support her position, Clemmer refers to her testimony at the hearing that (1) she informed her supervisor that she would be unable to continue working if she was required to wear a mask for her entire shift, and (2) she consistently took her mask off during her shift when nobody was around and that her manager "knew . . . and approved" of this practice. But this testimony does not establish any type of agreement, formal or otherwise, between Clemmer and Cook Hospital. In fact, Clemmer never testified that she and Cook Hospital had an "agreement" that she would only work the afternoon shift and, that as part of this agreement, she could periodically remove her mask during her shift. Rather, the record reflects that Cook Hospital had a strict mask policy in place and that there were no exceptions to this policy. Specifically, Cook Hospital's assistant administrator testified that Cook Hospital implemented a mask policy at the start of the pandemic that "required" employees "to wear our masks at all times . . . while we're in the facility." Moreover, Clemmer acknowledged that Cook Hospital implemented this policy at the start of the pandemic. Although Clemmer may have broken this policy by taking her mask off at times during her shifts, the fact that she was not immediately disciplined for her behavior does not demonstrate that Cook Hospital approved of Clemmer's behavior. Instead, the record reflects that Clemmer was consistently reminded of her need to comply with the policy, particularly toward the end of her employment. And to the extent that Clemmer testified that Cook Hospital approved of her removing her mask during her shift, the ULJ found that testimony to not be credible, and we defer to that credibility determination. *See Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (providing that this court defers to credibility decisions by the ULJ). Therefore, the ULJ did not err in determining that

Clemmer and Cook Hospital did not have an employment agreement that Clemmer remain primarily on the afternoon shift.

Because there was no agreement between Clemmer and Cook Hospital that Clemmer would remain primarily on the afternoon shift, Cook Hospital did not create an adverse working condition by moving Clemmer to the morning shift. There is also no indication that Cook Hospital's mask policy was adverse to Clemmer or would cause an average, reasonable person to quit. And to the extent the mask policy was adverse to Clemmer, Cook Hospital provided reasonable accommodations: Clemmer was provided with various mask options, including a smaller face shield that she never tried. Moreover, Clemmer was told to take extra breaks, including breaks "outside if she wanted some fresh air." Accordingly, the ULJ did not err in determining that Clemmer did not quit her employment for a good reason caused by her employer.

B. It was not medically necessary for Clemmer to quit.

Clemmer also argues that the ULJ erred in determining that it was not medically necessary for her to quit her employment. To be eligible for unemployment benefits under the medical-necessity exception, the applicant must quit because a "serious illness or injury made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7). This "exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*

The ULJ found that "credible evidence supports that Clemmer's emphysema did not prevent her from complying with [Cook Hospital's] mask policy" because "Clemmer admitted [that] her doctor would not agree to write a note stating that she could not wear a

mask." The ULJ also found that Cook Hospital offered reasonable accommodations such as "additional breaks" or "different face coverings," but "Clemmer chose not to try them." The ULJ, therefore, concluded that it was not medically necessary for Clemmer to quit.

Clemmer argues that the "ULJ erred when it made its determination that it was not medically necessary for . . . Clemmer to quit solely on the lack of an opinion from [her physician]." To support her argument, Clemmer cites *Madsen v. Adam Corp.*, in which this court reversed a ULJ's determination that the medical-necessity exception did not apply where the employee met with the employer and informed the employer that she intended to quit her employment because of an impending operation to correct a problem that the standing required by her job exacerbated. 647 N.W.2d 35, 38-39 (Minn. App. 2002). During that meeting, the employee and employer discussed that there were no suitable jobs available with the company that would allow the employee to sit, thereby alleviating her problem. *Id.* at 36. This court determined that the employee had made reasonable efforts to remain in her employment during the meeting with her employer.[1] *Id.* at 38. In so holding, this court noted that the statute "requires only notice to an employer" of the medical issue, "it does not require written notice from a physician." *Id.*

Clemmer's reliance on *Madsen* is misplaced. In *Madsen*, the employer never asked for a physician's note from its employee, nor did it dispute that the employee had a medical

[1] Notably, the version of the medical-necessity statute at issue in *Madsen* required only that the applicant make "reasonable efforts to remain in that employment in spite of the serious illness or injury." Minn. Stat. § 268.095, subd. 1(7) (2000). But in subsequent amendments that resulted in the current version of the statute, the legislature removed the "reasonable efforts" language and made the accommodation request an explicit statutory requirement.

condition and that her condition prevented her from continuing to perform her employment duties. Similarly, Cook Hospital never disputed that Clemmer has emphysema. But, unlike in *Madsen*, Cook Hospital asked Clemmer to provide a note from her physician stating that her medical condition prevented her from complying with the mask policy. Not only did Clemmer fail to provide Cook Hospital with a note from her physician, but she specifically testified that her physician refused to provide a statement because "[h]e didn't feel that . . . I had any medical issue that would . . . interfere with my work." The ULJ found this testimony to be credible, and it supports a determination that Clemmer's medical condition did not prevent her from complying with Cook Hospital's mask policy.

Moreover, for the medical-necessity exception to apply, Clemmer must have informed Cook Hospital of her condition *and* requested accommodation with no avail. *See* Minn. Stat. § 268.095, subd. 1(7). As addressed above, upon being informed of her issues with the mask policy, Cook Hospital attempted to accommodate Clemmer by providing her with different mask options, including "different face shields," and "additional breaks" where she could go outside and get "fresh air." These accommodations were reasonable under the circumstances. Although Clemmer claims that additional breaks were not practical, and that she never had the opportunity to try the new face shield offered by Cook Hospital, the record indicates that Clemmer never pursued the accommodations. As such, the ULJ did not err in concluding that the medical-necessity exception was not applicable.

Because the ULJ did not err in determining that the medical-necessity exception did not apply, and that Clemmer did not quit her job for a good reason caused by her employer, the ULJ properly concluded that Clemmer was ineligible for unemployment benefits.

II.

Clemmer argues, in the alternative, that she was deprived of a fair hearing because the ULJ (A) "did not ensure [that] all relevant facts were fully developed" and (B) abused its discretion by not issuing subpoenas for her doctor and her supervisor. Thus, Clemmer argues that the matter should be remanded for additional factfinding.

A ULJ must conduct the hearing "as an evidence-gathering inquiry." Minn. R. 3310.2921 (2021). In doing so, the ULJ "must assist all parties in the presentation of evidence" and control the hearing "in a manner that protects the parties' rights to a fair hearing." *Id.* This court will reverse a ULJ's decision for failure to conduct a fair hearing if the ULJ employed an unlawful procedure or conducted the hearing in an arbitrary and capricious manner. Minn. Stat. § 268.105, subd. 7(d)(3), (6); *see also Wichmann v. Travalia & U.S. Directives, Inc*, 729 N.W.2d 23, 27 (Minn. App. 2007).

A. The relevant facts were fully developed.

Clemmer argues that the ULJ failed to develop the record (1) related to why Clemmer's immediate supervisor had not been relaying information to the hospital's assistant administrator about Clemmer's health problems; (2) on the adequacy of the accommodations offered to Clemmer by Cook Hospital; (3) "on the question of what . . . Clemmer's employment expectations were"; and (4) "by not inquiring into additional evidence that should have been included in the record," such as Clemmer's CT scan. We disagree.

First, whether Clemmer's immediate supervisor had been relaying information to the assistant administrator about Clemmer's health problems was irrelevant because

Clemmer specifically testified that she informed her supervisor about her problems with being masked during her shift, and the assistant administrator testified that she repeatedly reminded Clemmer about the mask policy and the need to follow it. Second, the record reflects that there was extensive testimony related to the accommodations offered to Clemmer, which included extra breaks and alternative masks. Third, the assistant administrator testified that everyone was required to wear masks over their face and mouths and that Clemmer was told "multiple" times of this expectation. And fourth, there is no indication that additional evidence was necessary because Cook Hospital never disputed that Clemmer suffered from emphysema, and Clemmer's CT scans would be relevant only to that issue. Instead, the issue was whether it was medically necessary for Clemmer to quit rather than wear a mask, and Clemmer testified that her doctor did not think her emphysema prevented her from wearing a mask during her shifts. Thus, the record was adequately developed on the relevant issues.

B. The ULJ did not abuse its discretion by declining to issue subpoenas.

A ULJ has the power to subpoena witnesses, documents, and other exhibits if the requesting party shows that the evidence is necessary, Minn. R. 3310.2914, subp. 1 (2021), and a "duty to assist" parties with the development of the record, *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 357 (Minn. App. 2016). "A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." *Icenhower v. Total Auto, Inc.*, 845 N.W.2d 849, 853 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. July 15, 2014). We review a ULJ's subpoena decision for abuse of discretion. *Id.*

At the end of the evidentiary hearing, Clemmer mentioned that "it's sounding like we're gonna have to . . . subpoena" [Clemmer's doctor] in order to . . . get the information you would like to get." The ULJ denied the request, indicating it was not relevant.

Clemmer contends that the ULJ should have subpoenaed her doctor because "any testimony given by [her doctor] would have been highly relevant to the determination of whether . . . Clemmer had a serious illness that would have required her to quit employment at Cook Hospital." But there was no dispute that Clemmer suffered from a serious illness—emphysema. The issue was whether this illness made it medically necessary for Clemmer to quit due to her alleged inability to work while wearing a mask, and Clemmer specifically testified that her doctor did not believe wearing a mask prohibited her from working at Cook Hospital. Because Clemmer testified as to her doctor's opinion, no further testimony from the doctor was necessary.

Clemmer also argues that her supervisor should have been subpoenaed because he "would have been able to corroborate testimony as to any agreements Cook Hospital had with . . . Clemmer, as well as any information . . . Clemmer had given him regarding her medical condition." But Clemmer never specifically requested that the ULJ subpoena her supervisor; instead, she simply made vague references in her written submissions before the evidentiary hearing related to her supervisor being subpoenaed, which is not enough to show that Clemmer wanted her supervisor to be subpoenaed. Moreover, Clemmer fails to demonstrate that there is any information that she told her supervisor that she did not tell human resources. And the hospital's assistant administrator testified that Clemmer did not have an agreement with Cook Hospital to work only the afternoon shift and that Clemmer

did not have permission to pull her mask down because such a practice would be against the hospital's mask policy. Therefore, ULJ did not abuse its discretion by declining to issue a subpoena for Clemmer's supervisor, and Clemmer is unable to show that she was deprived of a fair hearing.

Affirmed.