STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2017

William Steiger,
Relator,

vs.

Poly Pak Plastics, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 8, 2011
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 25662379-3

Laurie A. Steiger, Cottage Grove, Minnesota (for relator)

David J. Hvistendahl, Northfield, Minnesota (for respondent employer Poly Pak Plastics)

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

Considered and decided by Minge, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

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

PETERSON, Judge

Relator William Steiger challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit employment and neither the medical-necessity nor the good-reason-caused-by-the-employer exception to ineligibility applies. Relator also argues that the ULJ erred in declining to hold an additional evidentiary hearing to allow him to submit a medical statement that was admitted in a separate, related proceeding regarding relator's eligibility for unemployment benefits following the quit. We affirm.

FACTS

Relator was employed full time as a night supervisor by respondent Poly Pak Plastics, Inc., a company that manufactures plastic, from January 2008 through July 7, 2010. In June 2009, relator took a leave of absence from work because he had stomach surgery. Relator returned to work after three weeks. Early in 2010, relator began having stomach pain, feeling light-headed and dizzy, experiencing burning sensations in his chest and throat, and experiencing weakness in his arms and legs. After seeing his doctor about his symptoms on May 12, 2010, relator was out of work for a few days. Relator's symptoms improved while he was out of work but worsened again after he returned.

On May 19, relator went to the hospital. He was released with no diagnosis, and his doctor recommended that he take a two-week leave of absence from work to determine whether his symptoms were caused by exposure to substances at work. When relator saw his doctor for a follow-up appointment on June 2, the doctor extended the

leave for two more weeks. On the doctor's recommendation, relator returned to work part time on June 15 and wore a protective mask at work.

On June 23, the plant supervisor asked relator when he would be able to resume his normal 12-hour shifts, and relator stated that he did not think he would be able to do so because he was still not feeling well. The plant supervisor stated that he would talk to the employer's owner about possibly assigning relator to another type of shift, but relator responded that he would talk to the owner himself. On June 24, relator left a voicemail message for the company's owner, in which he stated: "I guess it's . . . just not working out here. I've got a lot of things going on here. I just don't feel good for one thing. I don't know. A lot of things bothering me. . . . My own stuff I guess." Relator also stated that he understood that Poly Pak needed a supervisor who could be at work on a regular basis and had someone in mind to replace him and asked whether Poly Pak would allow him to collect unemployment benefits.

On June 25, relator's attorney sent Poly Pak a letter stating that relator's health had improved significantly during his four-week leave but that his symptoms recurred when he returned to work. The letter also stated that there were potential claims under the Americans with Disabilities, Worker's Compensation, and Family and Medical Leave Acts and proposed a settlement that would include a lump-sum payment and an agreement to not contest relator receiving unemployment benefits. On June 30, relator's attorney sent a letter to Poly Pak's attorney, repeating the settlement offer and requesting that relator be placed "on a paid medical leave or other paid leave until this situation is resolved." After consulting Poly Pak's attorney, Poly Pak's owner declined to place

relator on paid medical leave because the most recent statement from relator's doctor, dated June 2, authorized relator to return to work on June 15 and indicated no restrictions.

By letter dated July 6, relator's doctor stated that he believed it was in relator's "best medical interests to search for an alternative occupation that would not require similar chemical exposure." On July 7, Poly Pak responded by letter stating that it was "unaware of any current medical restrictions" and that relator was expected to "return to work immediately." The same day, relator submitted a letter of resignation.

Relator filed a claim for unemployment benefits. Apparently because relator's claim indicated that he quit for medical reasons, two separate files were opened, one to address the issue of relator's availability to perform suitable employment and one to address the issue of his reason for quitting. In the availability proceeding, a department adjudicator initially issued a determination of ineligibility because requested information about relator's medical condition had not been received. On August 12, after receiving a medical statement from relator's doctor, a department adjudicator issued an amended determination of eligibility. That determination was not appealed.

In this proceeding, a department adjudicator determined that relator is ineligible for unemployment benefits because he quit for medical reasons without first requesting an accommodation from his employer. Relator appealed to a ULJ. Following an evidentiary hearing, the ULJ found:

> Although [relator] credibly testified that he suffered from multiple symptoms, at no time was he diagnosed with any specific illness. Moreover, the letters sent by [relator's] physician do not provide any specific information about his condition and symptoms that would support a finding of a

> serious illness. It is also unclear whether it was medically necessary for [relator] to quit because of those symptoms. The physician recommendation that [relator] should look for a different occupation is not equivalent to a more specific determination that it would be detrimental to [relator's] health to remain employed.

The ULJ also found that relator's request for accommodation when he returned from medical leave on June 15 was granted, that relator did not request further accommodation before quitting, and that relator's request for paid medical leave was not supported "by any medical documentation that would indicate that such accommodation was reasonable or necessary." Based on these findings, the ULJ concluded that the medical-necessity exception to ineligibility for a person who quits employment did not apply. The ULJ also concluded that the good-reason-caused-by-the-employer exception did not apply based on credible evidence "that the conditions at the plant were not harmful to the employees," that "safety equipment, including masks, was available to the employees at all times," and that, although there were discussions about finding a possible replacement for relator, relator was never told that he would be terminated.

Relator filed a request for reconsideration. In support of the request, relator submitted the medical statement by his doctor that had been submitted in the separate, availability proceeding but not at the hearing before the ULJ in this proceeding. The ULJ affirmed the decision, stating that the medical information "would not likely change the outcome of the decision, as it addresses only the issue of [relator's] medical condition and does not affect the key finding that [relator] failed to make a proper request for accommodation." The ULJ explained that he was rejecting relator's argument that he had

made a sufficient request for accommodation because relator admitted that Poly Pak granted requests for accommodation before relator asked to be placed on paid medical leave, relator's claim that he made seven requests for accommodation was not supported by evidence in the record, and relator's request to be placed on paid medical leave "appear[ed] to be an example of legal maneuvering aimed at improving [relator's] position in the anticipated legal dispute with [Poly Pak] rather than a genuine effort to find a solution that would allow [relator] to continue working."

This certiorari appeal followed.

D E C I S I O N

I.

This court may affirm the ULJ's decision, remand the case for further proceedings, or reverse or modify the decision if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are "unsupported by substantial evidence in view of the entire record as submitted" or affected by error of law. Minn. Stat. § 268.105, subd. 7(d) (2010).

This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's factual findings will not be disturbed when they are supported by substantial evidence. *Id.* Whether an employee is ineligible to receive unemployment benefits is a question of law, which this court reviews de novo. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010); *see also Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000)

(stating that whether an employee had good reason to quit is a legal question subject to de novo review).

Medical necessity

A person who quits employment is not eligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010). One exception applies if

> the applicant quit the employment (i) because the applicant's serious illness or injury made it medically necessary that the applicant quit . . . . 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., subd. 1(7)(i).

Relator challenges the ULJ's finding that he did not request further accommodation before quitting. Poly Pak granted relator's requests for leave between May 12 and May 17, 2010, and between May 19 and June 15, 2010. Poly Pak also granted relator's request to work part time when he returned on June 15. Relator argues that his request to be placed on paid medical leave was a sufficient request for further accommodation. But when relator made this request, the only information that Poly Pak had was the June 2 statement from relator's doctor authorizing relator to return to work on June 15 without restrictions. Although relator later told Poly Pak that he did not think he would be able to resume his normal 12-hour shifts because he was still not feeling well, this statement was insufficient to show that paid leave was a reasonable accommodation. When Poly Pak responded to relator's request to be placed on medical

leave, stating that it was "unaware of any current medical restrictions" and that relator was expected to "return to work immediately," relator resigned without submitting medical information showing that it was reasonable or necessary for him to be placed on medical leave. Relator submitted a letter from his doctor stating that it was in relator's best medical interests to search for an alternative occupation that would not require similar chemical exposure, but the letter did not indicate that it was necessary for relator to quit his employment.

The authority relied on by relator does not show that Poly Pak's refusal to grant relator's request to be placed on paid medical leave was a failure to make a reasonable accommodation available. In *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38-39 (Minn. App. 2002), this court concluded that the employee made reasonable efforts to remain in employment when her medical condition made it impossible for her to perform her job and the only other job that she could have performed had reduced pay and hours. Even if relator was unable to perform his job as night-shift supervisor due to a serious medical condition, the record does not show that there were no other jobs that he could have performed. The plant supervisor told relator that he would talk to Poly Pak's owner about assigning relator to another type of shift, but relator stated that he would talk to the owner himself and then failed to do so. Relator notes Poly Pak's owner's failure to respond to his June 24 phone call. But relator did not request an accommodation in that phone call. He stated that he had not been feeling well, that he had a lot of things bothering him, and that he understood that Poly Pak needed someone who could be at work on a regular basis. Relator also cites *Madsen* to support the position that

documentation from a physician is not required to show a serious medical condition. But in *Madsen*, the employer did not request documentation. 647 N.W.2d at 38.

The other cases that relator cites are not on point because they involve employees who were terminated due to chemical dependency, and the issue was whether they made reasonable efforts to control their chemical dependency. *Leslin v. Cnty. of Hennepin*, 347 N.W.2d 277, 278-79 (Minn. 1984); *Peksa v. Fairview-Southdale Hosp.*, 512 N.W2d 913, 917-18 (Minn. App. 1994), *superseded by statute*, Reemployment Insurance-Technical Changes, ch. 107, § 44 (1999) (concluding that employee made reasonable efforts to retain employment when he made consistent efforts to remain in treatment but was unable to control chemical dependency); *Umlauf v. Gresen Mfg.*, 393 N.W.2d 198, 200 (Minn. App. 1986).

Because relator did not support his request to be placed on paid medical leave with medical documentation showing that such accommodation was reasonable or necessary, the evidence does not show that Poly Pak failed to make a reasonable accommodation, and the ULJ properly concluded that the medical-necessity exception does not apply.

Good reason attributable to the employer

A second ineligibility exception applies if the applicant quit "because of a good reason caused by the employer." Minn. Stat. § 268.095, subd. 1(1).

> (a) A good reason caused by the employer for quitting 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.
>
> (b) The analysis required in paragraph (a) must be applied to the specific facts of each case.
>
> (c) 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 considered a good reason caused by the employer for quitting.

Id., subd. 3.

Relator argues that the ULJ failed to state the reasons for finding credible the evidence about workplace safety that Poly Pak presented. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2010). The ULJ stated the following reasons for the credibility determination:

> Both [the plant supervisor] and the general manager . . . testified that they were not aware of any complaints about toxic fumes or ventilation problems at the plant. The citations that the employer received from the Minnesota Department of Labor focused on issues not related to ventilation or use of chemicals at the plant. [Relator] failed to provide specific information about the work conditions that could negatively affect his health or demonstrate any connection between the chemicals used at the plant and the symptoms he suffered from.

These reasons sufficiently explain the ULJ's credibility determination, and the ULJ's findings support the conclusion that the good-cause exception does not apply. We also note that the statute requires that the applicant "complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before

that may be considered a good reason caused by the employer for quitting." Minn. Stat. § 268.095, subd. 3(c). Because relator failed to follow up on the discussion about assigning him to a different shift or provide Poly Pak with documentation showing that his request to be placed on paid medical leave was reasonable, the requirement that the employer be given a reasonable opportunity to correct adverse working conditions was not satisfied.

II.

> In deciding a request for reconsideration, the unemployment law judge must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing conducted under subdivision 1.
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> The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) 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) (2010).

This court will not reverse a ULJ's decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). An error of law can constitute an abuse of discretion. *Whitaker v. 3M Co.*, 764 N.W.2d 631, 636 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

The ULJ determined that the medical statement that was submitted in relator's separate, availability proceeding "would not likely change the outcome of the decision, as

it addresses only the issue of [relator's] medical condition and does not affect the key finding that [relator] failed to make a proper request for accommodation." We also note that the statement was not submitted to Poly Pak before relator quit; it was submitted to respondent Department of Employment and Economic Develpoment after relator quit. When relator asked to be placed on paid medical leave, the only medical information that had been provided to Poly Pak was the June 2 statement from relator's doctor authorizing relator to return to work on June 15 and indicating no restrictions. Relator then resigned without submitting medical information showing that it was reasonable for him to be placed on medical leave. Because relator did not support his request with medical documentation showing that such accommodation was reasonable, the ULJ did not err in finding that the medical statement would not likely change the outcome of the decision and denying reconsideration.

Because relator failed to show that the medical statement would likely change the outcome of the decision, we need not address relator's argument regarding the ULJ's failure to ensure that the medical statement was admitted into evidence in this proceeding.

Affirmed.