**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-186**

Gerald Shovein,
Relator,

vs.

The Children's Museum, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed September 19, 2011**
**Affirmed**
**Klaphake, Judge**

Department of Employment and Economic Development
File No. 26235481-3

Gerald Shovein, St. Paul, Minnesota (pro se relator)

Jessica Molyneaux Marsh, Felhaber, Larson, Fenlon & Vogt, Minneapolis, Minnesota (for respondent The Children's Musuem)

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

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Stoneburner, Judge.

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

**KLAPHAKE**, Judge

Relator Gerald Shovein challenges the decision of the unemployment law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment with no applicable exception to ineligibility, and argues that the ULJ erred by refusing to hold an additional evidentiary hearing. Because relator's claim that he quit because of medical necessity is not supported by the record, and he has offered no good reason for not offering the proposed additional evidence at the original hearing, we affirm.

## D E C I S I O N

We may reverse or modify the ULJ's decision if, among other reasons, it was procedurally defective, based on an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). We review questions of law de novo but we will not disturb findings of fact unless they are unsupported by substantial evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). The ULJ decides whether and why an employee quit as a question of fact. *Country Market v. Dahlen*, 396 N.W.2d 81, 82 (Minn. App. 1986).

*Medical Necessity Exception*

An employee who voluntarily quits his employment is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (2010). But if an employee quits because a serious illness makes it medically necessary to do so, he is not ineligible for benefits. *Id.*, subd. 1(7). In order to qualify for this exception, the employee must first inform his employer of the problem and request reasonable accommodation; if no

reasonable accommodation is available, the employee is eligible for unemployment benefits. *Id.*

Here, relator informed his employer in 2009 about pain in his legs that made it difficult to perform his job. He requested a reduction in hours from full to part time. Based on this request, the employer reduced his hours from full time to no more than 30 hours per week. Although relator apparently was not satisfied with 30 hours per week and would have preferred to work 20 hours per week, he acquiesced in this arrangement. Relator testified that he thought the employer was aware of the continuing problems with his legs after the accommodation was made, because he "kind of complained about it," he "could hardly walk," and he "was stumbling up and down the stairs all the time." However, he did not request further accommodation after the 2009 discussion because he knew there was a staff shortage.

The ULJ found that relator "did not raise the issue with his employer or request an accommodation after his request for a reduction in hours in October 2009." This finding is supported by the evidence. The employer was aware that relator's legs bothered him, but the employer had already granted an accommodation by reducing relator's hours, and relator did not request a further reduction in hours before quitting.

This court concluded that an employee was eligible for benefits when the employer was aware of her vein disease and the recommendation that she avoid long periods of standing, but was unable to make a reasonable accommodation. *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38-39 (Minn. App. 2002). Although the employee "did not explicitly ask for a work 'accommodation,'" this court noted that she had discussed her

medical problems and limitations with the employer, and both knew that the only accommodation available would result in fewer hours and lower pay. *Id.* at 39. This court concluded that the employee had made "reasonable efforts" to come to an agreement about accommodation and reversed the commissioner's representative's decision that the employee was ineligible for unemployment benefits. *Id.*

Here, the employer was aware of relator's continuing problems with his legs. But the employer made a reasonable accommodation, which relator accepted. Unlike *Madsen*, it was not clear that relator's medical problems were serious. In *Madsen*, the employee had consulted with her doctor, who discussed possible surgery with her and advised her to avoid long periods of standing. *Id.* at 38-39. Relator did not provide the employer with similar information and did not consult a doctor until after he quit. From the employer's testimony, further accommodation may have been available had relator requested it, but he did not do so and he did not provide the employer with information that would have alerted the employer to the need for further accommodation. On these facts, the ULJ did not err by determining that relator was ineligible for unemployment benefits.

*Additional Evidentiary Hearing*

Relator argues that the ULJ erred by refusing to accept additional evidence on his request for reconsideration. "In deciding a request for reconsideration, the [ULJ] 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." Minn. Stat. § 268.105, subd. 2(c) (2010). But the ULJ must hold an additional evidentiary

hearing if the party proposing new evidence can show that the new evidence would likely change the outcome of the decision and that there was good cause for not previously submitting the evidence. *Id.* The appellate court reviews the ULJ's decision to grant or deny an additional evidentiary hearing for an abuse of discretion. *Vasseei v. Schmitty & Sons Sch. Buses*, 793 N.W.2d 747, 750 (Minn. App. 2010).

Relator sought to submit evidence that his employer gradually took away his personal time off (PTO) and failed to pay overtime. Relator did not provide a reason for failing to submit this evidence at the original hearing and did not contend that the employer's testimony at the original hearing was false. Further, until the request for reconsideration, relator had only claimed that he quit for medical reasons. The ULJ did not abuse his discretion by denying relator an additional evidentiary hearing.

**Affirmed.**