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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0641**

Ulanda Wiley,
Relator,

vs.

Dolphin Staffing - Dolphin Clerical Group,
Respondent,

Department of Employment and Economic Development,
Respondent

**Filed February 3, 2014
Affirmed
Smith, Judge**

Department of Employment and Economic Development
File No. 28633313-11

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Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because she quit her temporary job assignment for personal reasons, and not because the job was unsuitable.

FACTS

On August 9, 2011, relator Ulanda Wiley began employment with respondent Dolphin Staffing, working on a temporary assignment at Medtox Labs. The assignment was initially expected to last about six weeks, ending in mid-September. Wiley is a single mother of three children. During her first month of employment, Wiley accumulated several absences as a result of illnesses, a medical appointment, and a meeting at her daughter's school. All of these absences were unexcused under Dolphin's no-fault attendance policy, which deemed absences without prior approval unexcused regardless of the cause, and mandated termination upon the fifth unapproved absence in a six-month period.

On September 6, 2011, a Dolphin staffer discussed the absences with Wiley and told her Dolphin would require her to sign a written warning if she had another one. Wiley accrued another absence that afternoon, but refused to sign a written warning. Two days later, another Dolphin staffer called to tell Wiley that Medtox wanted to extend her assignment into mid-October. Wiley told the staffer she could not commit to working until mid-October if strict adherence to the no-fault attendance policy would be required. Wiley gave her two-week notice and committed to working through September 23.

After giving her notice, Wiley communicated with Dolphin staffers, her Dolphin supervisor, and Dolphin's director of human resources, stating that she wanted to continue her employment. But she maintained that she could not commit to compliance with the attendance policy because she could not control emergencies. Dolphin declined to accommodate Wiley's inability to comply with the attendance policy. By the time her employment ended on September 23, Wiley had accumulated additional absences due to a family funeral and another illness.

After her separation from Dolphin, Wiley applied for unemployment benefits, and respondent Department of Employment and Economic Development (DEED) determined she was ineligible. Wiley appealed DEED's determination, arguing before the ULJ that although an applicant who quits employment is generally ineligible for unemployment benefits, her circumstances fit within a statutory exception for applicants who quit unsuitable employment within 30 days. The ULJ decided that although Wiley gave notice within 30 days of her start date the exception did not apply because she was actually employed by Dolphin for more than 30 days. Wiley requested reconsideration, and the ULJ affirmed.

Wiley appealed to this court, and we reversed, holding that for purposes of the 30-day unsuitability exception, an employee who gives notice of quitting in advance of her last day of actual employment is deemed to have quit at the time of notice. *Wiley v. Dolphin Staffing–Dolphin Clerical Group*, 825 N.W.2d 121, 125 (2012), *review denied* (Jan. 29, 2013). We remanded for consideration of whether Wiley quit because the employment was unsuitable. *Id.* at 126.

On remand, a different ULJ concluded that Wiley had quit for personal reasons, and not because the employment was unsuitable. Wiley requested reconsideration, and the ULJ affirmed. The matter now comes before us on a writ of certiorari.

D E C I S I O N

We may remand, reverse, or modify a ULJ's decision if the substantial rights of the applicant may have been prejudiced because the findings, inferences, conclusions, or decision are affected by an error of law, are unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2012). "This court views the ULJ's factual findings in the light most favorable to the decision," defers to the ULJ's credibility determinations, and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

An employee who quits employment is generally ineligible for unemployment benefits unless her circumstances fit within certain exceptions defined by statute. Minn. Stat. § 268.095, subd. 1 (2012). One of the statutory exceptions provides that an employee who quits is eligible if "the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant." *Id.* subd. 1(3). Suitability is also subject to statutory definition. *See* Minn. Stat. § 268.035, subd. 23a (Supp. 2011) (defining suitable employment). Employment with a staffing service is unsuitable as a matter of law if less than 25 percent of the applicant's wage credits are from a job assignment through a staffing service. *Id.* (g)(4). On Wiley's first appeal, this court determined that her employment with Dolphin was

unsuitable as a matter of law because her base period lacked sufficient wage credits from staffing-service assignments. *Wiley*, 825 N.W.2d at 125. The issue now before this court is whether the ULJ erred in deciding that, under section 268.095, subd. 1(3), Wiley quit for personal reasons, and not because the employment was unsuitable.

It is undisputed that Wiley's absences resulted from illnesses and family obligations for which she did not receive prior approval from Dolphin. In expressing her concerns about her future compliance with the attendance policy, Wiley cited her inability to control emergencies related to the needs of her family. She has also cited her need to attend to other personal commitments, which she had delayed in anticipation that her assignment would end in mid-September. The ULJ correctly construed the 30-day unsuitability exception to require that the applicant quit at least in part because of the temporary nature of the job. *See* Minn. Stat. § 268.095, subd. 1(3). To the extent Wiley quit because she needed to attend to future personal obligations, she did so not because the employment was temporary, but essentially because it was not temporary enough to avoid conflicts with those obligations. Additionally, the record suggests Wiley feared that additional unexcused absences would result in termination. Fear of termination does not relate to the temporary nature of the employment.

Based on our review of the record, we conclude that the evidence substantially supports the ULJ's conclusion that Wiley quit for personal reasons, and not because the employment was unsuitable.

Affirmed.