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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1011**

Mindy Walter,
Relator,

vs.

Lakes Landscape Services,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed March 16, 2010
Reversed and remanded
Stauber, Judge**

Department of Employment and Economic Development
File No. 22178882-2

Mindy Walter, Minneapolis, Minnesota (pro se relator)

Lakes Landscape Services, Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator was ineligible to receive unemployment benefits after she quit her employment. The ULJ

concluded that although relator quit work for substantially better employment that began three months after she quit, she was not eligible for benefits in the interim because she was not ready and willing to accept available and suitable employment. Relator argues that the ULJ's decision was erroneous because she was willing to accept available employment, but there was no suitable employment available. Because the ULJ's findings are insufficient on the issue of whether there was suitable employment available at the time relator quit, we reverse and remand.

FACTS

In February 2008, pro se relator Mindy Walter began working full time as a landscape designer and sales representative for respondent Lakes Landscape Services, LLC (Lakes). Relator was paid straight commission for her work; she earned a gross income of \$19,750 in 2008. Towards the end of the year, relator and Brian Cooney, the owner of Lakes, engaged in contract negotiations for possible employment in 2009. Because the landscape business is seasonal, relator had little work after the middle of November. Consequently, the parties discussed possible interim duties for relator to supplement her nominal commission-based income. These possibilities included the development of a website, putting on displays at home and garden shows, and performing snow removal. But relator alleges that she and Lakes were unable to come to contract terms for 2009.

In early January 2009, relator was offered a position with Lee's Landscape and Design (Lee's). The position did not start until March, but it offered a \$36,000-per-year

salary, a gas card, and health benefits. Relator accepted the position and quit her employment with Lakes on January 5, 2009.

On January 11, 2009, relator established a benefit account with respondent Minnesota Department of Employment and Economic Development (department). A department adjudicator initially determined that relator was ineligible for benefits, and relator appealed. Following a de novo hearing, the ULJ affirmed the initial determination of ineligibility. Relator subsequently filed a request for reconsideration with the ULJ, who again affirmed. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court may remand, reverse, or modify if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are, among other things, made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views the ULJ's findings in the light most favorable to the decision and will not disturb findings that are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court also defers to the ULJ's credibility determinations and evaluations of conflicting evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

An applicant who quits employment is ineligible from receiving unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2008). One

exception is the “better job” exception, which provides that the applicant is not ineligible if

the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment[.]

Id., subd. 1(2) (2008).

Here, the ULJ found that relator quit to accept other covered employment and that the new employment offered substantially better terms and conditions of employment. The ULJ also found that relator “has not worked at Lee’s and, consequently, has not earned sufficient wages to overcome any period of ineligibility arising from her decision to quit employment at Lakes.” Thus, the ULJ concluded that relator “has met the exception for a quit to accept better employment.” But the ULJ noted that “[a]n applicant for unemployment benefits . . . must meet each of the statute’s eligibility requirements before receiving unemployment benefits,” including being “available for suitable employment.” The ULJ concluded that relator was not willing to accept available and suitable employment because she quit her job at Lakes despite being “aware that she was expected to work home and garden shows during the winter months at Lakes.” Therefore, the ULJ concluded that relator was not eligible for benefits.

Relator argues that although there was a substantial gap between the time she quit her employment and the time she was scheduled to begin her new employment, she could not continue her employment with Lakes because she would have been required to sign a

contract. Relator further contends that she applied for other employment before starting her new job but was unable to find temporary employment. Thus, relator argues that the ULJ erred by denying her unemployment benefits.

A review of the record indicates that there were discussions between relator and Cooney concerning relator's possible continued employment with Lakes. These employment discussions included possibilities of developing a website, putting on displays at home and garden shows, and performing snow removal. But the ULJ failed to make findings as to whether this work was actually available and offered to relator. The ULJ also failed to make findings as to whether Cooney offered relator a contract to remain employed with Lakes in 2009. As a result, there are insufficient findings in the ULJ's order to support the conclusion that relator was not willing to accept available and suitable employment prior to the beginning of her employment with Lee's. Therefore, we reverse the ULJ's decision and remand for findings on whether Lakes formally offered relator suitable work to perform in late 2008 and early 2009.

Reversed and remanded.