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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-226**

Paul Fleming,  
Relator,

vs.

G & G Septic, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed December 7, 2010  
Affirmed  
Schellhas, Judge**

Department of Employment and Economic Development  
Agency File No. 23038174-3

Thomas H. Boyd, Winthrop & Weinstine P.A., Minneapolis, Minnesota (for relator)

G & G Septic, LLC, Grand Marais, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and  
Larkin, Judge.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that he is eligible for benefits under the medical-necessity exception. We affirm.

### FACTS

Relator Paul Fleming worked for respondent G&G Septic LLC from April 2008 through September 2008 servicing portable toilets. On September 13, 2008, Fleming underwent emergency surgery and was hospitalized for approximately three weeks. Even though Fleming did not directly communicate with G&G about his condition, G&G's owner, Carl Gresczyk, learned of Fleming's situation and visited him in the hospital.

Fleming did not ask G&G for a leave of absence or an accommodation for his medical condition. Instead, he assumed that he would be laid off if he returned to work because the work season was ending and continued work at G&G likely would be unavailable. Fleming therefore decided not to return to G&G after he recovered from surgery.<sup>1</sup> He also did not return to G&G in the spring because he accepted other

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<sup>1</sup> Fleming states in his brief that his need for continued medical care necessitated his relocation 120 miles away from his employment with G&G. Fleming did not raise this at the hearing before the ULJ; he raised it only in his request for reconsideration. "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 initial evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009). The record on appeal from a ULJ's decision consists of the papers filed with the agency, the exhibits, and the transcript of the proceedings before the ULJ. *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 709 n.1 (Minn. App. 2010) (citing Minn. R. Civ. App. P. 110.01, 115.04, subd. 1). Fleming's

employment. Fleming did not directly inform G&G of his decision not to return, instead relying on a friend, who also worked for G&G, to inform G&G. But Gresczyk testified that no one informed him that Fleming did not intend to return to G&G, and he therefore assumed that Fleming was too sick to work.

Fleming applied for unemployment benefits and initially received them. But G&G contested his eligibility, arguing that Fleming had not been laid off. Respondent Minnesota Department of Employment and Economic Development (DEED) requested additional information from Fleming, but Fleming failed to respond and DEED therefore determined that he was ineligible for unemployment benefits and that DEED had overpaid benefits to him. Fleming appealed and submitted the requested information. After a contested hearing, a ULJ found that Fleming “simply ended the employment because the work season was soon ending without discussing any possible accommodation or plan to return.” The ULJ determined that Fleming quit his employment, that the medical-necessity exception to ineligibility did not apply, and that no other exception to ineligibility applied. Fleming requested reconsideration, and the ULJ affirmed his decision. This appeal follows.

## **D E C I S I O N**

The Minnesota Unemployment Insurance Law “is remedial in nature and must be applied in favor of awarding unemployment benefits.” Minn. Stat. § 268.031, subd. 2 (Supp. 2009). “Any legal conclusion that results in an applicant being ineligible for

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assertions about the medical necessity of his relocation are therefore not part of the record.

unemployment benefits must be fully supported by the facts” and “[i]n determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.” *Id.*

This court may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2008).

This court views a ULJ’s factual findings in the light most favorable to the decision. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “[W]e will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. DaVanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the ULJ’s findings establish that the applicant falls under a statutory exception to ineligibility is a question of law, which we review de novo. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000) (addressing whether employee had good reason to quit employment).

One who quits employment is not eligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception is for medical necessity, which applies when the employee quit because it was medically necessary due to serious illness or injury. *Id.*, subd. 1(7). The medical-necessity

exception to ineligibility applies only if “the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*

Fleming argues that he quit his employment due to medical necessity and that the medical-necessity exception therefore should apply. He argues that his seasonal employment was over and that requesting an accommodation was pointless because he was going to be laid off soon anyway. But the plain language of section 268.095, subdivision 1(7), provides that the unemployment-benefits applicant must request accommodation from the employer to qualify for the medical-necessity exception with no exception for circumstances where such a request would be futile. The facts are undisputed that Fleming did not request an accommodation. The ULJ therefore properly determined that the medical-necessity exception does not apply to Fleming’s circumstances and that Fleming is ineligible for unemployment benefits.

Because Fleming quit his employment and the medical-necessity exception does not apply, he is ineligible for unemployment benefits.

**Affirmed.**