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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-239

Johanna Juris,
Relator,

vs.

Brad C. Eggen,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 2, 2010
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 23630864-3

Johanna Juris, Minneapolis, Minnesota (pro se relator)

Brad C. Eggen, Minneapolis, Minnesota (attorney pro se)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

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

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

PETERSON, Judge

In this certiorari appeal, relator challenges the decision by an unemployment-law judge that she is ineligible for unemployment benefits because she quit her employment without good reason caused by the employer. We affirm.

FACTS

Respondent-employer Brad Eggen, a lawyer with a solo practice, employed relator Johanna Juris as his only legal assistant from June 17, 2009, through October 16, 2009. Relator, who had previously worked as a legal assistant at a law firm, became responsible for operating the employer's law office. Relator had no one to train her and was working for the first time on personal-injury cases, and she did not have experience with insurance or medical terminology. Relator found the job confusing and overwhelming, and she believed that she did not have the skill level or capabilities for the job.

Relator discussed these problems with her employer several times, beginning in early August, and expressed her belief that she did not have the skills for the job and suggested that he might want to hire someone else. The employer believed that relator was fully capable of performing the job but needed some help with organizational skills. He did not want to hire someone else, offered to bring in an experienced legal assistant to help train relator, and gave her other suggestions.

On September 23, 2009, relator saw her physician, who diagnosed her with anxiety disorder and depression and wrote a note stating that relator was suffering job-

related stress, which was being treated with medication, and needed a couple of days off to rest. Relator faxed the note to the employer and took two days off.

On Friday, October 9, 2009, relator informed the employer that her niece had died of a drug overdose the previous day, and she received permission to take two days off the following week for the wake and funeral. Relator again discussed with the employer her belief that she was not the right person for the job, suggested that he begin to look for a replacement, and discussed her illness caused by the stress and anxiety. The employer disagreed and said that he needed her in the job. They also had a disagreement about how late relator should stay after 5:00 p.m. to finish pending work.

On Tuesday, October 13, 2009, at 7:55 a.m., relator left a voicemail message with her employer, telling him that she was overwhelmed, unable to work due to her anxiety, needed to "get healthy" and "get well," and could not function at the job; she did not explain how long she planned to be gone from work. Relator took off Wednesday, October 14, and Thursday, October 15, to attend her niece's wake and funeral. Also on October 14, relator had an appointment with another doctor, who said that relator was suffering from stress, prescribed medication to address her current crisis, and recommended that relator return to her physician for more treatment if she was not getting better. Relator then scheduled an October 16, 9:30 a.m. appointment with her physician.

On October 16, relator stopped in the employer's office before her doctor's appointment, greeted the employer's former paralegal, who was filling in for relator, picked up some of her belongings, and left her office key on the paralegal's desk without

comment. Relator declined to talk to the employer and left for her medical appointment. Later that day, the employer, who testified that he interpreted relator's conduct as a quit, left a message to this effect with relator. Relator testified that it was in this message that the employer discharged her.

Relator applied for unemployment benefits and received an initial determination of eligibility based on a finding that she had been discharged without misconduct. The employer appealed to the ULJ, who held a hearing and ruled that relator had quit, and that none of the exceptions that would make her eligible for benefits applied. The ULJ affirmed the ineligibility determination on reconsideration, and this certiorari appeal followed.

D E C I S I O N

I.

"Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (quotation omitted). We view the ULJ's findings of fact in the light most favorable to the decision and defer to the ULJ's credibility determinations, and we will not disturb factual findings if they are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court may reverse the ULJ's decision if relator's substantial rights have been prejudiced because the ULJ erred as a matter of law or if the findings are not supported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2008).

"A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (Supp. 2009); *see Nichols*, 720 N.W.2d at 594 (holding that record supported determination that employee quit, where she told her supervisor she had to leave, stating that she was not able to put up with it any longer, gathered personal belongings, and left, with no contact with employer for two days). "A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." Minn. Stat. § 268.095, subd. 5(a) (2008); *see Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985) (holding that employee reasonably believed that he had been discharged, when employer asked him to turn in his tools and said that employer could not guarantee work when employee returned from a leave of absence; employer walked away when employee asked whether he should call upon his return; and employer had complained of employee's work in the past and recently discovered that employee had failed a licensing exam).

The ULJ ruled that relator demonstrated an intent to quit her employment, citing her message to her employer on October 13, 2009, when she said she could not work or function at the job, without stating whether she meant for only that day or a longer period of time, and her actions on October 16, 2009, when she dropped off the office key without explanation. The ULJ also noted that before these events, the employer never said anything to relator about terminating her employment and, instead, told her that he was not willing to let her go and hire someone else.

Relator disputes this finding, arguing that neither calling in sick without setting a specific date for her return nor leaving her key at the office showed that she quit. Relator testified that out of courtesy for the paralegal who would be filling in for her, she left her office key, although she admittedly did not tell the paralegal that this was what she was doing and, instead, made no comment when she left the key. Relator also argues that not only did she not quit when she stopped in the office before her doctor's appointment, but the employer discharged her in his telephone message to her later in the day, when he said he was going to replace her and that she was no longer employed there.

The employer, however, testified that in the message, he told relator that because she dropped off the key, he assumed that she decided not to continue with the position. The ULJ credited the employer's testimony that because there had been no contact from relator and she had dropped off her office key, he assumed that she had decided not to continue with her employment. This court must defer to the ULJ's inferences and credibility determinations, and we conclude that the ULJ's finding that relator demonstrated an intent to quit and did quit is supported by substantial evidence.

II.

A person who quits employment is not eligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception applies if "the applicant quit the employment . . . 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." Minn.

Stat. § 268.095, subd. 1(7). The ULJ determined that this exception does not apply to relator.

A. Medical necessity

The ULJ found that as a result of job-related stress, relator developed symptoms of anxiety and depression, for which she was treated with medication. But the ULJ also found that neither of relator's doctors told her that she needed to quit her employment and that the preponderance of the evidence did not show that it was medically necessary for relator to quit her employment.

There is no dispute that the employer was aware that relator was being treated for stress and anxiety and that relator several times discussed leaving the job due to the stress. But there is no evidence that during relator's employment, her doctors recommended that she needed to leave the job to treat her illnesses.

Relator cites an October 16, 2009 letter from her physician, stating that she may need to leave her current job for her health. DEED notes that this letter was not submitted into evidence at the hearing, and relator contends that the ULJ did not have the letter because he did not have the documents that she submitted. However, relator testified about the letter, and its contents were presented to the ULJ. But, more importantly, the ULJ determined that relator quit when she stopped by the office on October 16 and dropped off her key, and relator's appointment with the doctor who wrote the letter occurred later, after she was no longer employed. Thus, the letter is not evidence that the employer knew that her doctor had recommended that she leave the employment.

Relator also cites a March 8, 2010 letter from her doctor, reporting that she is doing much better and no longer has the anxiety and panic attacks, which indicates that her symptoms were largely induced by her job stress. But this letter is being offered for the first time on appeal, and cannot be considered because it is not part of the record before the ULJ. *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 709 n.1, (Minn. App. 2010).

B. Reasonable accommodation

After an employer is informed about a medical problem, the serious-illness exception does not apply unless the employee requests an accommodation and "no reasonable accommodation is made available." Minn. Stat. § 268.095, subd. 1(7). The employer accommodated relator's condition when her doctor advised that she take two days off to rest and the employer allowed her to do so. There is no evidence that relator requested an additional accommodation. Relator contends that the employer never offered her a leave of absence. But she testified that she had not thought of asking for a leave of absence. The ULJ found that relator did not request an accommodation before quitting. Under the plain language of the statute, the serious-illness exception applies only if the employee requests an accommodation, and substantial evidence supports the determination that relator did not do so.

III.

The ULJ also determined that the ineligibility exception under Minn. Stat. § 268.095, subd. 1(1), for a person who quits employment because of a good reason

caused by the employer, does not apply to relator. We agree that this exception does not apply. The statute provides:

> 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.

Minn. Stat. § 268.095, subd. 3(a) (2008). The statute provides further that "[i]f 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." Minn. Stat. § 268.095, subd. 3(c) (2008).

Relator complained to the employer that she felt underqualified for and was overwhelmed by her job. But the working conditions that relator complained about were the job duties of the position for which she was hired. The ULJ determined that "the preponderance of the evidence does not show that [the employer] treated [relator] wrongly or unreasonably, or substantially failed in any duty he owed to her." Relator does not contend that her job duties were different from the duties that she was hired to perform, that her duties changed during the course of her employment, or that the duties were unreasonable. The real nature of relator's complaint to the employer was that, from the beginning, she found her job confusing and overwhelming, and she believed that she did not have the skill level or capabilities to perform the duties of the job.

Under these circumstances, the relevant ineligibility exception to be considered appears at Minn. Stat. § 268.095, subd. 1(3), which states that an applicant who quits employment is eligible for unemployment benefits if "the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant." Although the ULJ did not consider this exception, a remand to permit the ULJ to do so is not necessary because, under the plain language of the statute, the exception applies only if the applicant quit within 30 days of beginning the employment, and it is undisputed that relator did not quit until more than 30 days after beginning the employment.

IV.

Relator claims that the hearing before the ULJ was unfair. To prevail on this claim, relator must show that her substantial rights were prejudiced because the ULJ's decision was made through an unlawful procedure or affected by an error of law. *See* Minn. Stat. § 268.105, subd. 7(d); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

The ULJ has the duty to "ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). "The [ULJ] should assist unrepresented parties in the presentation of evidence" and "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2009). A significant procedural defect may require a remand and a new hearing. *Thomas v. Cnty. of Hennepin*, 660 N.W.2d 157, 161 (Minn. App. 2003) (citing Minn. R. 3310.2921).

Relator contends that the ULJ raised his voice, which intimidated her, and did not allow her to "tell her story." She contends that she was not allowed to read from the eight handwritten pages that she had prepared to explain her problems, and, instead, when she asked the ULJ if she could provide her testimony, he explained that he was going to ask her questions, and then if there was anything he left out, they could get to that. Relator also contends that the ULJ cut off her testimony and allowed the employer to speak more freely and for longer than she spoke. Finally, relator contends that the ULJ's conduct was mean, abusive, brash, and unnecessarily intimidating and that she was flustered and ill and did not represent herself well. Although the transcript does not reveal the ULJ's demeanor, it appears that, on a few occasions, the ULJ became impatient. But relator and the employer both provided extensive testimony, and there is no indication that relator did not get to "tell her story."

Relator complains that the ULJ did not have all of the documents that she submitted or that she and the employer had in their hearing packets. But the ULJ obtained copies of two documents and put them in the record. And relator does not identify any prejudice suffered as a result of material that the ULJ should have considered but did not.

Relator argues that the ULJ disregarded her testimony regarding the illness caused by her job. Relator testified that she wanted to tell the ULJ about the effort she made to become acclimated to the job, even though she did not have anyone to train her. The ULJ said that he was not sure that the information was really pertinent. Relator then testified that she did not feel that it was her fault that she could not handle the job, although she

took it and tried, and became ill. Relator also claims that she wanted to explain the circumstances leading up to her employment with the employer, but the ULJ said that what occurred during previous employments was not relevant. The ULJ is authorized to exclude irrelevant evidence. Minn. R. 3310.2922 (2009). The employer does not dispute that relator made a serious effort to learn and perform her job duties. Although we understand that relator wanted to explain the sincere effort she made to do her job, relator was not discharged for unsatisfactory performance, and she has not explained how the testimony she wanted to present was relevant to the issues before the ULJ.

Relator also objects to the ULJ's decision to listen to a voice-mail message that the employer offered, after initially ruling that because the employer did not produce the message before the hearing, it would not be considered. Relator contends that the ULJ allowed the message to be played after the employer offered to make an offer of proof regarding its content; relator asserts that she did not understand what an offer of proof is. After the parties disputed whether relator made certain statements in the recorded message, the ULJ allowed the employer to make an offer of proof. The ULJ then asked relator twice whether she objected to the message being played over the phone, and after she said that she did not object, the ULJ allowed the message to be played. Relator has not shown that listening to the message made the hearing unfair or that she did not understand what was occurring, even though she was not familiar with the term "offer of proof."

Even assuming that relator was not allowed to present all of the information that she wished to present at the hearing before the ULJ, and she was dissatisfied with the

presentation that she made, she has not identified a significant procedural defect that prevented her from clearly and fully developing the relevant facts. Although the ULJ could have made additional efforts to accommodate relator, relator has not demonstrated that her substantial rights were prejudiced because the ULJ's decision was made through an unlawful procedure.

V.

Finally, relator argues that she is entitled to benefits because DEED is bound by its initial determination of eligibility. But the initial determination of eligibility specifically advised relator that "[t]his determination will become final unless an appeal is filed by Monday, December 7, 2009." *See* Minn. Stat. § 268.101, subd. 2(f) (Supp. 2009) (providing that a determination of eligibility or ineligibility is final unless an appeal is filed by the applicant or notified employer within 20 calendars days after the determination was sent). The employer appealed, which prevented the determination from becoming final. Thus, DEED is not bound by the initial determination.

Affirmed.