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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-457**

Debra Lehn,
Relator,

vs.

Someplace Safe,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 23, 2010
Affirmed
Shumaker, Judge**

Department of Employment and Economic Development
File No. 23934365-3

Debra Lehn, Winston, Oregon (pro se relator)

Kristi A. Hastings, Pemberton, Sorlie, Rufer, Kershner, P.L.L.P., Fergus Falls, Minnesota
(for respondent employer)

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

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

UNPUBLISHED OPINION

SHUMAKER, Judge

By certiorari appeal, Debra Lehn challenges the decision of the unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she quit her job for one without substantially better terms and conditions of employment. Lehn contends she quit her job for a better one and that she did not receive a fair hearing by the ULJ. We affirm.

FACTS

On September 2, 2009, Lehn quit full-time employment with Someplace Safe, a shelter for battered women. Lehn had worked for 15 months as a full-time women's advocate at a wage of \$13.13 an hour and part time for the prior five-and-a-half years. Someplace Safe provided her with health insurance, paid time off, and life insurance.

Lehn quit Someplace Safe to work as an administrator for Ink Monkey, an Oregon tattoo parlor owned by her longtime boyfriend's son, which was then in the planning stage. She was to "set up . . . payroll, accounts receivable, accounts payable . . . [and do] all the quarterly taxes and payroll." Lehn alleges she quit Someplace Safe to pursue what she considered a career-enhancing opportunity at Ink Monkey that offered work she did not perform at Someplace Safe.

At Ink Monkey, Lehn was to earn a wage of \$15 an hour and work approximately 20 hours each week until business picked up. She would not receive health insurance, paid time off, or life insurance from Ink Monkey. Lehn claimed on her 1099 tax form that she earned \$2,600 at Ink Monkey from September 14, 2009, to October 30, 2009, of

which \$1,500 was for services rendered and \$1,100 was for her September rent. Whether she received the \$1,100 rent payment from her boyfriend's son as a gift or as compensation for services to be rendered is unclear. Lehn also received financial assistance from her boyfriend's son to relocate to Oregon, but the record does not indicate the amount. Lehn did not have an employment contract with Ink Monkey but expected to go on Ink Monkey's payroll on November 1, 2009, under its new ownership.

During this time, Lehn also worked as an independent consultant for Lia Sophia Jewelry Company. She contends this work, in conjunction with her work for Ink Monkey, constituted better employment than her job at Someplace Safe. The record indicates she earned a net income from Lia Sophia Jewelry Company of approximately \$637 from August 21, 2009 to December 11, 2009. Had she continued to work at Ink Monkey 20 hours a week from August 21, 2009 to December 11, 2009, our calculations indicate she would have earned \$5,037. However, had she continued to work for Someplace Safe full time during this period, she would have earned approximately \$8,400.

Lehn applied for unemployment benefits in October of 2009 because, on October 24, 2009, Ink Monkey's sole proprietor (and the son of Lehn's boyfriend) died unexpectedly. She was unable to continue working for Ink Monkey until the company could be purchased. The record does not show that Ink Monkey had opened for business as of January 2010, the date of Lehn's hearing.

Lehn's application for unemployment benefits was initially denied on the ground that she quit Someplace Safe for personal reasons. Lehn appealed to the ULJ, who held a

hearing and ruled that she voluntarily quit employment at Someplace Safe and that none of the exceptions qualified her for benefits; specifically, Lehn did not quit Someplace Safe for better employment. The ULJ affirmed the ineligibility determination on reconsideration, and this certiorari appeal followed.

D E C I S I O N

“As a question of law, this court reviews de novo whether an applicant is properly disqualified from unemployment benefits.” *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010). When reviewing a ULJ’s decision, this court may affirm, remand for further proceedings, or reverse or modify the decision upon a determination that the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are made on unlawful procedure, are affected by error of law, are not supported by substantial evidence in view of the entire record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2008). This court reviews the ULJ’s findings of fact in the light most favorable to the decision. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court defers to the ULJ’s credibility determinations and upholds those findings if supported by substantial evidence in the record. *Id.* And this court reviews legal issues de novo. *Id.*

Minnesota unemployment law “is remedial in nature and must be applied in favor of awarding unemployment benefits.” Minn. Stat. § 268.031, subd. 2 (Supp. 2009). “The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed.” Minn. Stat. § 268.03, subd. 1 (Supp. 2009).

Better employment

In general, employees who voluntarily quit employment are not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 1 (Supp. 2009); *Grunow*, 779 N.W.2d at 580. One exception is for employees who quit “to accept other covered employment that provided substantially better terms and conditions of employment but. . .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.” Minn. Stat. § 268.095, subd. 1(2). Lehn quit Someplace Safe to work for Ink Monkey because she believed her work at Ink Monkey offered “substantially better terms and conditions of employment.” But because of the untimely death of Ink Monkey’s proprietor soon after Lehn began work, her employment could not continue, and she did not earn enough “to satisfy the period of ineligibility that would otherwise be imposed.”

But an employee will not “receive benefits if he voluntarily discontinued his employment with the ‘mere possibility’ of accepting work offering substantially better conditions or substantially higher wages.” *Hackenmiller v. Ye Olde Butcher Shoppe*, 415 N.W.2d 432, 434 (Minn. App. 1987). Lehn’s wages increased from \$13.13 an hour at Someplace Safe to \$15 an hour at Ink Monkey. But Lehn’s workweek decreased from 40 hours at Someplace Safe to 20 hours at Ink Monkey. In fact, Lehn claimed on her 1099 tax form that she earned \$1,500 in wages from September 14, 2009 to October 30, 2009, and our calculations show she actually worked an average of 14.3 hours each week during this time. Lehn alleges the hours she worked a week were to increase after Ink Monkey became established. But she offers no evidence of when this was to occur. The

record thus contains substantial evidence to support the ULJ's determination that Lehn quit employment in favor of the "mere possibility" of better employment.

And an employee's new position must not be just "better" but must be "substantially better." *Grunow*, 779 N.W.2d at 580. "Whether the new employment is substantially better is based on an objective comparison of the positions' terms and conditions, and 'not a comparison of which position is more suitable to the personal needs of an individual employee.'" *Id.* (quotation omitted). Lehn worked at least 20 fewer hours each week at Ink Monkey than at Someplace Safe, and she lost health benefits, paid time off, and life insurance when she took the job with Ink Monkey. There is substantial evidence in the record to support the ULJ's finding that Lehn simply felt the position at Ink Monkey was more suitable to her personal needs. Lehn testified at her hearing that she left Someplace Safe for "family reasons." When the ULJ confirmed with her that she moved to Oregon for both family and a job, she responded, "Well, yeah, yeah, but it's really family. You know, I don't know how much family had to do with it except for that it was my boyfriend's son." And she testified that she and her boyfriend had a longtime goal of retiring in Oregon. There is substantial evidence in the record to support the ULJ's determination that Lehn quit her job at Someplace Safe for personal reasons.

"[T]erms and conditions of employment are not limited to financial benefits, such as wages, but also contemplate benefits such as advancement opportunities, union representation, and group health, life, and disability insurance coverage." *Id.* Lehn's hourly wage was higher at Ink Monkey than at Someplace Safe, and she testified that her

work at Ink Monkey was better employment because it gave her more responsibility. However, Lehn lost health benefits, paid time off, and life insurance in moving to Ink Monkey. Similarly, a relator who quit a union job at \$22.70 an hour for a non-union job at \$21.50 an hour that required him to pay \$220 more each month for health insurance but that cut his daily commute by 30 to 40 miles did not demonstrate that the second employment had substantially better benefits. *Id.* at 578-79. The ULJ's determination that Lehn did not quit her job at Someplace Safe for a substantially better one at Ink Monkey is supported by substantial evidence.

Fair evidentiary hearing

An evidentiary hearing by a ULJ is “a de novo due process evidentiary hearing.” Minn. Stat. § 268.105, subd. 1(a) (Supp. 2009). Lehn alleges that her hearing was unfair because she could not understand the ULJ and because she did not feel she had the opportunity to express herself as she wished.

A fair hearing is one in which the ULJ fully develops the record, assists an unrepresented relator in presenting a case, and explains the procedure of and the terms used throughout the hearing. Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009); Minn. R. 3310.2921 (2009). The ULJ explained the nature of the hearing to both parties. He detailed the procedure of the hearing and what was to be expected of the parties. He informed them that the hearing could be postponed to subpoena witnesses or documents and that he would draw his conclusions based on a preponderance-of-the-evidence standard, explaining that term.

The ULJ has a duty to “ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b). The ULJ gave both parties the opportunity to testify, and he referenced the evidence they submitted. When Lehn testified, the ULJ asked relevant questions to clarify the record. He gave each party the opportunity to give a closing statement, and Lehn did so.

A ULJ must “reasonably assist pro se parties with the presentation of the evidence and the proper development of the record,” Minn. R. 3310.2921, and a showing of a significant procedural defect may result in a remand and a new hearing. *Thompson v. County of Hennepin*, 660 N.W.2d 157, 161 (Minn. App. 2003). The ULJ clearly explained the procedures for the hearing, and he guided Lehn through her testimony and helped clarify her arguments for the record. At the end of Lehn’s testimony, he asked her if she had anything more to add. Lehn declined, indicating she had provided all the evidence for the record that she intended. The record indicates the ULJ followed protocol for administering a fair evidentiary hearing.

Further, Lehn contends she “had a very difficult time understanding the ULJ.” She asked the ULJ to repeat or clarify a question or statement six times throughout the hearing. However, she did not make a complaint on the record. And whenever she asked for clarification, the ULJ responded with clarification. If any clarification was unsatisfactory, Lehn did not so indicate on the record.

Lehn must show her substantial rights were prejudiced because the ULJ’s decision was made through unlawful procedure or affected by error of law. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530 (Minn. App. 2007). Lehn has not

demonstrated she suffered substantial prejudice by improper procedure; on the contrary, it appears the ULJ used proper and clearly explained procedure. Nor has Lehn demonstrated the ULJ made an error of law during the hearing. Lehn thus received a fair hearing.

Affirmed.