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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2138**

Melody Boyd,
Relator,

vs.

Basic Needs - Higher Education Child Care,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed September 14, 2010
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development,
File No. 22888204-4

Melody Boyd, Minneapolis, Minnesota (pro se relator)

Basic Needs - Higher Education Child Care, Minneapolis, Minnesota (respondent
employer)

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

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the unemployment-law judge's (ULJ) decision that she is ineligible for unemployment-compensation benefits, arguing that she was discharged from her employment when she became ill, or, in the alternative, that her serious illness made it medically necessary that she quit. Because substantial evidence supports the ULJ's determinations that relator quit her employment and did not inform her employer of the serious nature of her illness or request a reasonable accommodation for her illness, we affirm.

FACTS

Relator Melody Boyd worked part-time for Basic Needs - Higher Education Child Care (Basic Needs) from November 1, 2007 to April 1, 2009. Boyd was hired through an internship training program. Boyd, who has Crohn's disease, had a number of absences and late arrivals to work; she received two written warnings about her unexcused absences.

On April 1, 2009, Boyd visited the emergency room for treatment because of the Crohn's disease. That day, she also called Basic Needs requesting her paycheck and stating that she was not able to work because of illness. A few days later, while Boyd was still hospitalized, her supervisor visited her and brought Boyd a final paycheck, along with a letter stating that Boyd's internship position had been filled. The letter also stated that Boyd had been absent from work since March 20, and because she was a part-time student intern requesting an extensive leave without a return date, with excessive

absences, Basic Needs would not renew her expired intern agreement. The letter also stated that, as discussed previously with Boyd, Basic Needs had no documentation of her first-aid or CPR certification, which would be required if she planned to return to the internship program.

Boyd had surgery on April 10. She received medical authorization to return to work on June 8 and then called Basic Needs to tell them she wished to return to work. The director informed Boyd that her position had been filled.

Boyd applied for unemployment benefits, and an adjudicator from the Department of Employment and Economic Development (DEED) determined that Boyd was not eligible for benefits because she quit her job for medical reasons without informing her employer of those reasons. Boyd appealed the determination. At a hearing before a ULJ, Boyd testified that she “told [the director] about [her] medical situation when [she] first started [at Basic Needs].” She testified that she “just got sick and was hospitalized,” but never told her employer that she was quitting or requested a leave of absence. She testified that she worked after March 20 until her April hospitalization.

The supervisor testified that on April 1, Boyd indicated that she was quitting by calling, asking for her check, and stating that “she was too sick to work” and “she was no longer going to be able to work with [Basic Needs].” The supervisor testified that she did not know the nature of Boyd’s illness, but only that Boyd could not eat spicy foods. The supervisor testified that on April 23, she received a leave-of-absence form from Boyd, retroactively requesting a sick day for March 16, but she explained that Boyd had worked on March 16.

A ULJ upheld the determination of Boyd's ineligibility for benefits, concluding that the more credible evidence supported a determination that Boyd quit her job, rather than that she was discharged from employment. The ULJ also found that Boyd did not request accommodation for her medical condition, that she quit before she requested a leave of absence, and that she only requested a sick day for March 16, not a leave of absence. On reconsideration, the ULJ affirmed the decision, and this certiorari appeal follows.

D E C I S I O N

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee is disqualified from receiving unemployment benefits is a question of law, which this court reviews de novo. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

Boyd argues that she did not quit her employment, but instead was discharged during her hospitalization and illness. Generally, a person who quits employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). The issue of whether an employee has been discharged or voluntarily quit presents a question of fact. *Nichols v. Reliant Eng'g & Mfg.*, 720

N.W.2d 590, 594 (Minn. App. 2006). A “quit” occurs “when the decision to end the employment was, at the time the employment ended, the employee’s,” while a “discharge” 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, subds. 2(a) (Supp. 2009), 5(a) (2008).

Here, the ULJ found that the more credible evidence supported a determination that Boyd quit, rather than that she was discharged. We defer to the ULJ’s credibility determination. *See Skarhus*, 721 N.W.2d at 344. Boyd testified that she did not tell her employer that she was quitting, but only that she would be absent during her illness. But Boyd’s supervisor testified that Boyd called in, stating that she “was too sick to work” and that “she was no longer going to be able to work with [Basic Needs].” The April 1 letter delivered to Boyd in the hospital refers to the phone call and confirms that Boyd was receiving her last check from Basic Needs. The letter also states that Boyd could reapply for additional work if she provided documentation of her first-aid and CPR certification, which Boyd admitted she had not done. Because this statement would not lead a reasonable person to believe that she would no longer be allowed “to work for [Basic Needs] . . . in any capacity,” it is inconsistent with a determination that Basic Needs discharged Boyd. *See* Minn. Stat. § 268.095, subd. 5(a). Therefore, upon review of the record as a whole, substantial evidence supports the ULJ’s determination that Boyd quit her employment.

The record does show that on April 23, Boyd submitted a leave-of-absence form, which cites “medical reasons” as a reason for requesting an “ongoing leave.” Therefore,

the record does not support the ULJ's finding that the leave-of-absence form relates only to a single sick day requested by Boyd. But the form contradicts Boyd's testimony that she did not ask Basic Needs for a leave of absence. Most importantly, the form was submitted three weeks after Boyd's employment ended and, therefore, is not relevant to whether she quit or was discharged. Thus, the ULJ's error does not affect our decision. *See* Minn. Stat. § 268.105, subd. 7(d) (providing that this court may reverse or modify the decision of the ULJ if the substantial rights of the relator may have been prejudiced).

Boyd also argues that, even if she quit her employment, she should not be disqualified from receiving benefits because her quit was medically necessary. An employee who quits employment is not disqualified from unemployment benefits if she “quit the employment because [her] serious illness or injury made it medically necessary that [she] quit.” Minn. Stat. § 268.095, subd. 1(7) (Supp. 2009). But “[t]his exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.* Whether an employee quit because a serious illness or injury made it medically necessary to do so is a question of law, which this court reviews de novo. *See Madsen v. Adam Corp.*, 647 N.W.2d 35, 38–39 (Minn. App. 2002) (reviewing this issue de novo as question of law).

Although Boyd testified that she informed Basic Needs of her medical situation, Boyd's supervisor testified that she did not know that Boyd had Crohn's disease, but only that Boyd had stomach problems if she ate spicy foods. Four of Boyd's co-workers also stated that they knew about Boyd's food sensitivity, but two of them stated that they kept that information confidential. Therefore, the ULJ was entitled to credit evidence that

Boyd did not inform her employer of the serious nature of her illness before she quit employment. *See, e.g., Prescott v. Moorhead State Univ.*, 457 N.W.2d 270, 273 (Minn. App. 1990) (deferring to ULJ's finding that employee did not inform employer of his serious depression before quitting employment and concluding that serious-illness exception therefore did not apply).

Finally, even if it were assumed that Boyd's employer knew of the serious nature of her illness because of her hospitalization, the record does not show that Boyd asked for any specific accommodation to allow her to work despite the illness. *Cf. Madsen*, 647 N.W.2d at 38–39 (concluding that applicant met medically-necessary test when she met with employer and discussed possibility of alternative job within the company, which would meet her medical need for less standing on the job). The ULJ did not err by determining that Boyd did not meet the ineligibility exception because she failed to request a reasonable accommodation for her serious illness.

Affirmed.