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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2114**

Carol Winter,  
Relator,

vs.

Eagle Broadcasting Corporation (1998),  
Respondent,

Department of Employment and  
Economic Development,  
Respondent.

**Filed July 23, 2012  
Affirmed  
Cleary, Judge**

Department of Employment and  
Economic Development  
File No. 28039018-3

Carol Winter, Beaver Creek, Minnesota (pro se relator)

Eagle Broadcasting Corporation (1998), Grand Forks, North Dakota (respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Stauber, Judge; and  
Cleary, Judge.

## UNPUBLISHED OPINION

**CLEARY**, Judge

Relator appeals the decision determining that she is ineligible for unemployment benefits. Relator argues that the unemployment-law judge (ULJ) erred when she determined that the medical-necessity exception under Minn. Stat. § 268.095, subd. 1(7) (2010), did not apply to relator. Relator contends that the ULJ also erred when she found that relator's testimony was unclear and inconsistent and when she found that relator's request for accommodation was untimely. We affirm.

### FACTS

Relator Carol Winter worked for respondent Eagle Broadcasting Corporation d/b/a Comfort Inn Hotel from May 11, 2009 until July 3, 2011. Relator worked the overnight shift at the hotel as the night audit. In 2004, relator was diagnosed with depression and anxiety. Her conditions caused shaking, cold sweats, vomiting, and diarrhea. As a result, it was hard for relator to work at the front desk because she would often be in the bathroom when guests arrived.

Relator was hospitalized for her symptoms from June 22–25, 2011. Relator was seen by three different doctors while she was at the hospital. One of the hospital doctors wrote a note stating that relator could return to work with no restrictions on June 28, 2011 (June 28 note). Relator also claimed that the hospital doctors advised her to quit her job, but she was unable to explain why, despite such advice, she was cleared to return to work in the June 28 note.

Relator submitted two letters to her employer on June 30, 2011. The first letter (resignation letter) was a notice that relator was quitting her position with respondent and that her last shift would be July 2–3, 2011. The second letter (June 30 letter) was a request to work the day shift and to limit her lifting to ten pounds or less, due to “medical issues.” Relator testified that she had spoken with her supervisor about her medical issues prior to the June 30 letter but that she had not requested a change in duties or any other kind of accommodation. She did not think she needed to request an accommodation because she did not think respondent would be able to offer her any other shift. Relator never spoke with anyone at the hotel about the accommodation request in her June 30 letter. She received a voicemail message on July 1, 2011, notifying her that respondent accepted her resignation.

On July 7, 2011, relator saw her primary care physician, Dr. Billion. On July 8, 2011, Dr. Billion wrote a letter (July 8 letter) stating that “It is my medical opinion that [relator] should not be working in the evening shift especially on a fulltime basis. At this point, I would ask her to resign from any overnight shift work . . . I would consider her to be disabled from a medical standpoint.” Although Dr. Billion did not mention any weight restriction in the July 8 letter, relator testified that he recommended a ten-pound lifting restriction sometime after June 30, 2011.

During the telephone hearing, the ULJ told relator and relator’s husband that she could hear them whispering in the background and that the whispering was inappropriate because the testimony needed to come from relator only. Relator explained that she was very anxious. The ULJ said it was okay if she needed more time to respond to the

questions and that she could take a break if necessary. At the end of the hearing, the ULJ asked relator five different times if she had anything else she would like to say. The ULJ also gave relator two separate opportunities to ask her husband questions. Finally the ULJ asked relator if she would like to make a closing statement, but the relator declined. The ULJ then concluded the hearing.

The ULJ issued findings of fact and a decision that relator quit her employment with respondent and no exception to ineligibility applied. Relator requested reconsideration by the ULJ. The ULJ issued a decision upon reconsideration affirming her original decision. This certiorari appeal followed.

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

This court may affirm, remand, reverse, or modify the decision of the ULJ if the substantial rights of a petitioner are prejudiced by the findings, conclusions, or decision, or are affected by an error of law, unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010).

### **I.**

“The evidentiary hearing is conducted by an unemployment law judge as an evidence gathering inquiry. . . . The unemployment law judge must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2010). Parties to an unemployment-benefits hearing “have the right to examine witnesses, object to exhibits and testimony, and cross-examine the other party’s witnesses. The judge should assist unrepresented parties in the presentation of evidence.” Minn. R. 3310.2921. A hearing is considered fair if the parties are afforded an opportunity to give statements,

cross-examine witnesses, and offer and object to evidence. *See Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529–30. (Minn. App. 2007). “A judge may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious. A judge is not bound by statutory and common law rules of evidence. The rules of evidence may be used as guide in a determination of the quality and priority of evidence offered.” Minn. R. 3310.2922.

Relator contends that the ULJ subjected her to rapid-fire questions and had an agenda to show that she was not credible. Relator also argues that the ULJ inappropriately ignored a letter (July 15 letter) from relator’s primary care physician dated July 15, 2011, that relator tried to submit as evidence, and that the ULJ did not fully develop the record.

In a similar case, a relator argued that the ULJ treated her unfairly during the telephone hearing by not explaining cross-examination; by not assisting the relator in cross-examining her employer; by asking the employer leading questions and not in-depth questions; by not requesting corroborating evidence from the employer; and by cutting off the relator’s questions. *Ywswf*, 726 N.W.2d at 529–30. The relator also argued that the ULJ erred by not accepting into evidence the transcript she offered and by not asking questions about the transcript. *Id.* at 530. The court examined the record and determined that “the ULJ conducted an even-handed, fair hearing” because the ULJ asked the relator if she had questions for her employer; asked her about the facts that were in dispute; gave the relator a chance to fully explain her position; and asked the relator why she disagreed with the employer. *Id.* The court found that, although the ULJ

did not receive the transcript into evidence, the ULJ considered the relator's claim that she was not attending school at the time she left the employer, which is the claim the relator was offering the transcript to support. *Id.* The court determined that the relator could not "show any prejudice from the ULJ's failure to receive the transcript into evidence." *Id.*

Similarly, the ULJ here fully developed the record. There is no indication from the hearing transcript that the questions from the ULJ were "rapid-fire" questions, and in fact, the ULJ told relator she could take a break if she needed one. The ULJ also asked relator additional questions to clarify her testimony and told relator to take her time when she was looking through her paperwork for specific documents. Finally, the ULJ asked relator at least five times whether she had any further testimony she wanted to add, asked relator twice if she wanted to ask her husband any questions, and offered relator a chance to make a closing argument. The hearing was fair because relator was given a chance to offer her statements, examine her husband, and add anything further that she thought would be relevant.

Also similar to *Ywswf*, the relator here offered a document that the ULJ did not receive into evidence. During the hearing, the ULJ referenced the July 15 letter that relator sent to the Department of Employment and Economic Development (DEED) and stated, "Since I have you on the line, I don't think it's necessary to get this document included as you can just offer testimony about this." In both the ULJ's original decision and the decision upon reconsideration, the ULJ emphasized that the June 28 note was convincing evidence that relator was able to return to work. In her decision upon

reconsideration, the ULJ reiterates that the June 28 note is better evidence than a note (July 8 letter) created a week after relator quit. The July 15 letter that relator wanted to submit was created even later than the July 8 letter, and the ULJ clearly did not believe that a letter created *after* relator quit would be relevant or probative. Because the ULJ can choose to exclude evidence, it was not error for the ULJ to exclude the letter.

## II.

Whether an employee quit based on medical necessity is a question of law, which we review de novo. *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38–39 (Minn. App. 2002). “We view the ULJ’s factual findings in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “[W]e will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.*

An applicant who quit employment is ineligible for all unemployment benefits . . . except when:

. . . .

(7) the applicant quit the employment (i) because the applicant’s serious illness or injury made it medically necessary that the applicant quit; or (ii) in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant. 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).

Relator argues that the ULJ erred in determining that it was not medically necessary for relator to quit her employment. Although we review, as a matter of law, whether the ULJ’s findings established that it was medically necessary for relator to quit

her employment, we will not disturb the ULJ's findings of fact when the record substantially supports them. In the October 21, 2011 decision, the ULJ found that relator "did not inform [respondent] of the medical condition or request an accommodation prior to quitting the employment." These two requirements, informing respondent of her medical problem and requesting an accommodation, must be met for the medical-necessity exception to ineligibility to apply. Minn. Stat. § 268.095, subd. 1(7).

There was substantial evidence presented that relator did not inform respondent about her medical condition. The June 28 letter was submitted to respondent stating that relator was able to return to work without restrictions. Although respondent did not participate in the hearing, respondent's submission to DEED's request for information was also part of the record. In that submission, respondent stated that relator did not communicate the nature of her medical condition to respondent until she quit. In contrast, relator claimed that she spoke with her supervisor about her medical problem at least ten times over the time period that she worked for respondent. Despite relator's testimony, which the ULJ did not find credible, the evidence presented at the hearing substantially supports the ULJ's findings that relator did not inform respondent about her medical condition.

Even if respondent knew about relator's illness based on relator's conversations with her supervisor, relator admits that she did not request an accommodation until she quit her employment. Relator argues that she did not ask for an accommodation because she "realized her employer wouldn't honor the accommodation request" because there was no open position. Under Minn. Stat. § 268.095, subd. 1(7), relator must request an

accommodation; there is no exception to this requirement, even if relator believed that respondent would not grant her request. Because relator did not submit a request for an accommodation until she quit, the medical-necessity exception under Minn. Stat. § 268.095, subd. 1(7) does not apply.

**Affirmed.**