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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1871**

Marisah J. Block, a/k/a Marisah J. Jensen,
Relator,

vs.

James D. Fellman DDS, P.A.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 25, 2012
Affirmed
Stoneburner, Judge**

Minnesota Department of Employment and Economic Development
File No. 27799922-3

Jasper D. Berg, Woodbury, Minnesota (for relator)

Elizabeth A. Storaasli, Dryer, Storaasli, Knutson & Pommerville, Ltd., Duluth,
Minnesota (for respondent Carlson Orthodontics)

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

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that, because she quit her job, she is ineligible to receive unemployment benefits, arguing that several exceptions to ineligibility apply. We affirm.

FACTS

Relator Marisah J. Block, a/k/a Marisah J. Jensen, was employed at James D. Fellman DDS (Fellman) in Duluth for two days: from August 31, 2010 until September 1, 2010. Block worked as a dental assistant to Dr. Carlson. At the time she began working for the clinic she was two months pregnant and lived in Grand Rapids, which is approximately a 90-minute drive from the clinic. During her second day at work, Block experienced some problems with her pregnancy that led her to see her doctor in Grand Rapids. The doctor told her that she needed immediate bed rest and would need to continue bed rest for at least two weeks.

On that day or the next, Block informed the orthodontic office that she had to quit her job because her doctor said she needed immediate bed rest. Block spoke with the person who had hired her when she called to quit, but she did not ask him for an accommodation. Block also spoke with the office manager about options that might be available, and together they came to the conclusion that Block could reapply for the position in the future. The office manager was not authorized to hire or fire employees.

Block worked in several dental-assistant positions in the eight years preceding her employment with Fellman. Immediately preceding her employment with Fellman, Block

worked for a chain of dental centers part-time as a dental assistant with responsibilities and pay similar to the work at Fellman and with commuting times that varied between 90 minutes and four hours each way.

After she quit the Fellman job, Block applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility. Block appealed. After an evidentiary hearing, the ULJ determined that Block is ineligible to receive unemployment benefits because she voluntarily quit her employment and her circumstances did not fall under an exception to ineligibility. The ULJ affirmed the determination on Block's request for reconsideration. This certiorari appeal followed.

D E C I S I O N

When reviewing a ULJ's decision, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are made upon unlawful procedure, affected by other error of law, unsupported by substantial evidence in view of the entire record as submitted, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2010).

We view the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will not disturb the ULJ's factual findings when they are supported by substantial evidence in the record. *Id.* Whether employment is suitable is a question of fact. *Zielinski v. Ryan Co.*, 379 N.W.2d 157, 159 (Minn. App.

1985). Whether an employee is eligible to receive unemployment benefits under the facts as found by the ULJ, however, is a question of law reviewed de novo. *Skarhus*, 721 N.W.2d at 344.

An applicant who quits employment is ineligible to receive unemployment benefits unless that applicant meets one of ten specific exceptions. Minn. Stat. § 268.095, subd. 1(1)-(10) (2010). Block argues that the unsuitable-employment, failure-of-the-employer-to-accommodate-a-medical-condition, and quitting-due-to-the-illness-of-an-immediate-family-member exceptions to ineligibility all apply to her circumstances, making her eligible to receive benefits. We disagree.

A. Unsuitable-employment exception

An applicant for unemployment benefits is not ineligible to receive unemployment benefits as a result of quitting employment if the applicant quit the employment within 30 calendar days because the employment is unsuitable for the applicant. Minn. Stat. § 268.095, subd. 1(3). The statute defines suitable employment as employment “in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2010). In determining whether employment is suitable for the applicant, “the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant’s customary occupation, and the distance of the employment from the applicant’s residence is considered.” *Id.* Employment is considered unsuitable if “the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the labor market area.” *Id.*, subd.

23a(g)(2) (2010). Suitability of employment is, at least in part, a question of fact. *See Hogenson v. Brian Knox Builders*, 340 N.W.2d 360, 363 (Minn. App. 1983) (remanding for suitability determination because it involved questions of fact). While the statute sets out the relevant criteria that must be considered, the ULJ has wide discretion in determining whether employment is suitable. *Mbong v. New Horizons Nursing*, 608 N.W.2d 890, 893 (Minn. App. 2000).

Block quit her employment within the 30-day time limit for this exception, and the issue is whether the employment was unsuitable. Block argues that the employment was unsuitable because her doctor indicated that, due to the complications of pregnancy, she was unable to safely perform any work and because the Fellman job was 97 miles away from her doctor, with no adequate medical facilities located between her job and her home. But the ULJ found that the employment with Fellman was suitable because Block had been employed as a dental assistant for many years and because her last position before Fellman involved the same or similar work responsibilities, compensation, and commuting time.

Block cites *Valenty v. Med. Concepts Dev. Inc.*, 503 N.W.2d 131 (Minn. 1993), for the proposition that, if an employee quits a job within 30 days for a medical condition that arises on the job, the employee is entitled to benefits under the unsuitable-employment exception. But that is not the holding in *Valenty*. There, a dental assistant who was receiving unemployment benefits and who was unable to find dental-assistant work for some time, accepted a position that was indisputably unsuitable after disclosing a back condition that she feared might prevent her from doing the light manufacturing

work involved. *Id.* at 133. After five hours on the job, which required her to repeatedly bend over a work table, Valenty told her supervisor that the work hurt her back and was not the type of work she wanted. *Id.* The supreme court held that Valenty was entitled to unemployment benefits despite having quit, reasoning that “a person receiving unemployment compensation benefits should not be penalized for taking an unsuitable job for a short time.” *Id.* at 134. *Valenty* does not stand for the proposition that a medical condition that arises during suitable employment makes the employment unsuitable for purposes of the unsuitable-employment exception to ineligibility for quitting a job.

Block argues that the ULJ’s decision was arbitrary and capricious because the ULJ identified Block’s employment with Fellman as suitable based on Block’s “past employment as a dental assistant, her compensation, and commute time” while failing to consider her “health, safety, physical fitness, and the distance between her commute and a medical facility,” and failing to consider that her pregnancy was at risk if she continued to work.

To prove that an agency’s decision was arbitrary and capricious, the claimant must demonstrate that the decision relied on improper factors, ignored important issues, ran counter to the evidence, or was highly implausible. *In re Charges of Unprofessional Conduct Contained in Panel File 98-26*, 597 N.W.2d 563, 567 (Minn. 1999).

The ULJ found that Block was unable to perform her duties due to the risk of miscarriage and implicitly found that this risk was due to complications of pregnancy, not to any activity related to the job. We conclude that the record supports this implicit

finding and reflects that the ULJ considered the appropriate factors to determine that the work was suitable.

Block also argues that the ULJ made an error of law by relying on her past employment and compensation to support his ruling that employment with Fellman was suitable and that he erred in failing to take into account Block's "current physical abilities." But as DEED points out in its brief on appeal, the ULJ was not required to take into account Block's "current physical abilities" because this particular factor is applicable only in cases where an applicant for unemployment compensation fails to accept or avoids offers of suitable employment, which is not the case here. *See* Minn. Stat. § 268.035, subd. 23a(b).

The ULJ properly applied the statutory factors to determine that Block's employment with Fellman was suitable, the determination was not arbitrary or capricious, and it was not affected by error of law. The unsuitable-employment exception to ineligibility does not apply to Block's circumstances.

B. Accommodation-for-serious-illness exception

An applicant for unemployment benefits who is determined to have quit employment is not disqualified from receiving unemployment benefits if "the applicant quit the employment . . . because the applicant's serious illness or injury made it medically necessary that the applicant quit." Minn. Stat. § 268.095, subd. 1(7). "This 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 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). The ULJ concluded that Block quit for medical necessity because she was “physically unable to perform her duties due to the risk of miscarriage,” but he also concluded that she “did not request an accommodation before quitting.”

Block asserts that her conversation with the office manager regarding her options constituted a request for accommodation. But the ULJ found Block’s testimony about this conversation not credible because it was inconsistent with information she provided on DEED’s questionnaire stating that she did not request an accommodation. And it is undisputed that Block did not request an accommodation from the person who hired her or any other person at Fellman who had authority to grant accommodation. The law requires that the request for accommodation be made of the “employer.” Under Minn. Stat. § 268.035, subd. 14 (2010), “employer” means “any person that has had one or more employees during the current or the prior calendar year.” Because Block failed to request an accommodation from her employer, the ULJ properly determined that the medical-necessity exception does not apply to Block’s circumstances.

C. Illness-of-immediate-family exception

An applicant for unemployment benefits who quits employment is not ineligible to receive unemployment benefits if the applicant quit the employment “in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant.” Minn. Stat. § 268.095, subd. 1(7)(ii). This exception applies only if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available. *Id.* The ULJ concluded that this

exception does not apply for the same reason that the medical-necessity exception does not apply: Block failed to request reasonable accommodation from her employer. We agree. The ULJ properly determined that the caring-for-immediate-family-member exception does not apply to Block's circumstances.¹

Affirmed.

¹ On appeal, DEED argues that an unborn child does not fit within the statutory definition of immediate family member. But the ULJ did not reach this issue, and because Block's failure to request accommodation from her employer precludes application of this exception to her circumstances, it is not necessary to reach this issue on appeal.