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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0531**

Susanne Aspley,
Relator,

vs.

Department of Veterans Affairs/Veterans Health Administration,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 3, 2012
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 28824387-3

Susanne L. Aspley, Excelsior, Minnesota (pro se relator)

Department of Veterans Affairs, Veterans Health Administration, Mary Lancaster,
Austin, Texas (respondent)

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

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she quit her employment, arguing that the medical-necessity exception under Minn. Stat. § 268.095, subd. 1(7) applied, that relator quit for good cause, and that the ULJ's decision was not consistent with the decision of a prior ULJ. Because relator has shown no basis for overturning the ULJ's decision, we affirm.

FACTS

Relator Susan L. Aspley worked full time as a communications specialist for respondent Department of Veteran Affairs from January 4, 2011 to November 4, 2011. Prior to starting employment, she was diagnosed with depression and alcohol dependency, both related to her prior service in the United States Army. After her first month on the job, relator began to “get overwhelmed” by the work expected of her. Although she had previously received mental-health treatment, she did not seek or receive any treatment while working for the DVA.

In October, relator asked to be placed on part-time status, but the DVA denied the request. She submitted her resignation the same day. She said her manager knew she “wasn't doing a good job” and that “[h]e knew something was going on,” but she did not specifically mention either her depression or chemical-dependency issues in their discussion. She testified that she “tried to . . . be more vague about it” because she found the situation “embarrassing.”

Other than relator's request to work part-time, there is no evidence in the record that she asked for any accommodations or specified why she wanted to work part-time. She said that it did not occur to her to ask for a leave of absence. After she stopped working, relator began regular mental-health and chemical-dependency treatment.

Relator applied for unemployment benefits in November 2011. On December 2, 2011, respondent Minnesota Department of Employment and Economic Development (DEED) determined relator was ineligible for benefits because she quit her job and did not meet the statutory requirements of either the "medical necessity" or "good reason" exceptions to the rule that an employee who quits is ineligible for unemployment benefits. Relator appealed, and her claim was denied following a telephone evidentiary hearing. The ULJ found that relator was ineligible for benefits because she (1) did not tell her employer about her health concerns, (2) did not ask for accommodations for those specific concerns, and (3) did not offer any evidence that her employer was the cause of her decision to quit. Relator's request for reconsideration was denied. This appeal followed.

On January 17, 2012, DEED issued a second determination of ineligibility, stating that relator was ineligible because she was not available for and actively seeking suitable employment during the period for which she requested benefits. Relator appealed, and after a telephone evidentiary hearing, a second ULJ determined that as of December 8, 2011, relator had been actively seeking employment and would therefore be eligible for unemployment benefits "if all other eligibility requirements [had] been met." This decision was not appealed.

DECISION

Whether an applicant is ineligible to receive unemployment benefits is a question of law, which this court reviews de novo. *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). The court may “affirm the decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights have been prejudiced because the findings, inferences, conclusion, or decision is affected by an error of law or is unsupported by substantial evidence in view of the record as a whole.” *Id.*

Where the legal conclusion is based on factual determinations, we view the ULJ’s findings in the light most favorable to the decision, deferring to any credibility determinations supporting the findings. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court does not disturb the ULJ’s factual findings when the evidence substantially sustains them. *Id.* (citing Minn. Stat. § 268.105, subd. 7(d)(5) (Supp. 2005)).

An individual who quits employment is ineligible to receive unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2010); *Lamah v. Doherty Emp’t Group, Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007). An exception exists when an applicant quits because of a serious illness or injury. Minn. Stat. § 268.095, subd. 1(7). This exception applies only where the illness makes it “medically necessary that the applicant quit,” and “the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*

Relator argues that the ULJ exceeded his statutory authority by disregarding the evidence of a serious medical condition presented by relator and her medical providers.¹ Neither the ULJ nor respondents challenge relator's assertion that her depression and chemical dependency are serious conditions. At issue is whether the relator met the notice and accommodation requirements of the medical-necessity exception. This requires relator to present evidence that she informed her employer of her medical problem, requested accommodation for that problem, and that no reasonable accommodation was made available by her employer. *Id.*

Relator testified that she did not specifically inform the DVA of her depression and chemical dependency issues because she was embarrassed. She believed that her manager "knew something was going on" but she did not offer any information to indicate that he knew she had a medical condition.

Even if relator's employer had received notice of her medical problem, relator would need to show that she requested an accommodation and that no accommodation was made available to her. An applicant is not necessarily required to expressly ask for accommodations. *Madsen v. Adam Corp.*, 647 N.W.2d 35, 38 (Minn. App. 2002) (holding that the employee did not expressly ask for accommodations but discussed alternative positions with her employer, and therefore fell within the medical-necessity exception).

¹ Relator also argues that the ULJ improperly disregarded her VA disability rating, but the VA disability rating is not properly before this court because it was not presented during the earlier proceeding and is not part of the record on appeal. Minn. R. Civ. App. P. 110.01. Excluding relator's disability rating does not affect the outcome of this appeal.

Although relator asked about the possibility of switching to part-time work, her testimony indicates that she did not expressly request an accommodation or make reasonable efforts to seek a solution that would allow her to remain with her employer.² She also testified that the job “wasn’t a good fit” and indicated that a leave of absence might not have helped because she “would go back to the same . . . responsibilities and the same job.”

Absent any evidence that relator informed her employer of her medical condition and asked for accommodations, the medical-necessity exception does not apply and relator is ineligible for benefits.

Relator makes several other brief arguments for eligibility. She argues that she quit for good reason and good cause, that the ULJ should have taken her employer’s failure to challenge her unemployment claim into account, and that the ULJ made an error of law in failing to credit the February 2, 2012 ruling that relator was available and actively seeking employment. None of these arguments offers a basis to overturn the ULJ’s determination that relator’s decision to quit disqualified her from unemployment benefits.

First, relator argues that she quit for good reason and good cause. Good reason is sufficient to qualify an individual for unemployment benefits only when the reason is caused by the employer. “A good reason caused by the employer for quitting is a reason

² Since *Madsen* was decided, the legislature has modified § 268.095, subd. 1 to remove the “reasonable efforts” language. The current statute requires that the employer be informed of the medical problem, that the applicant request accommodation, and that no reasonable accommodation be made available.

(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) (2010). Relator does not argue that her employer did anything that contributed to her decision to quit.

Relator next argues that the ULJ did not take her employer’s support for her unemployment claim into account. But DEED “has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal.” Minn. Stat. § 268.069, subd. 2 (2010). Therefore the ULJ did not act improperly by disregarding relator’s evidence on this point.

The second ULJ determined that, as of December 8, 2011, relator was actively seeking employment and therefore would be entitled to receive unemployment benefits “if all other eligibility requirements [had] been met.” Relator argues that the ULJ made an error of law in failing to take that decision into account.

The decision before us addresses whether relator’s circumstances fit either the medical-necessity or good-reason exceptions to the rule that an individual who quits is not entitled to unemployment benefits. The second decision, which was not appealed, addresses whether relator met the independent requirement of being available for and actively seeking suitable employment after she left her prior employment. The fact that

relator met this second requirement beginning in December 2011 has no bearing on whether she could invoke the medical-necessity or good-reason exceptions.

Affirmed.