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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0964**

Nicole Howard,
Relator,

vs.

Immanuel - St. Joseph's Hospital,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 17, 2014
Remanded
Worke, Judge**

Department of Employment and Economic Development
File No. 30787096-3

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Immanuel-St. Joseph's Hospital, Mankato, Minnesota (respondent employer)

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Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges an unemployment-law judge (ULJ) decision that she is ineligible to receive unemployment benefits because she quit her employment. We remand for further findings.

FACTS

Relator Nicole Howard worked as a part-time patient-care assistant at respondent Immanuel-St. Joseph's Hospital (ISJH) from April 4, 2011, to December 17, 2012. Howard missed work for about five weeks following surgery, and upon her return Howard was frequently absent from work due to chronic pain. She accrued 23 first-day absences, which ISJH defines as the first day, of possible consecutive days, that an employee is sick. Howard received two written warnings, and on November 27, 2012, she received a third and final warning informing her that any additional absences would result in her dismissal.

On the weekend beginning December 14, 2012, Howard was scheduled to work a three-day shift. On December 13, Howard went to an urgent-care clinic for pain, and a doctor wrote a note directing Howard to "rest for the weekend and take [her] medication." Although it is ISJH's policy to excuse absences when they are accompanied by a doctor's note, Howard's absences were unexcused for December 14 to December 16, according to her supervisor, Dennis Eggersdorfer. When asked at the ULJ hearing if he had received notice from staffing telling him that Howard was unable to work her assigned shift, Eggersdorfer said, "Not to my knowledge. The only phone call I received was from staffing saying that [Howard] was a no call/no show." Howard testified that she called in to work, spoke to someone in staffing to explain that she would be unable to work her shift, and was informed that her absences would be excused if she called in each day she was scheduled to work.

On December 17, 2012, Eggersdorfer sent Howard a text message telling her that they needed to talk. In response, Howard wrote: "I know I'm terminated because . . . if I

called in again I would be fired.” Eggersdorfer testified that the decision to discharge Howard had already been made when Howard quit; he sent Howard a letter verifying the reason for her discharge. Howard testified that she knew that she would be discharged for her most recent absences, and had told Eggersdorfer to “do what he [had] to do because [she] knew they were going to do it anyway.” Howard also answered affirmatively when asked whether she quit her employment.

The ULJ ruled that Howard “decided to quit in anticipation of discharge” due to her unsatisfactory attendance. Howard sought certiorari review.

D E C I S I O N

This court may alter a ULJ decision “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion or decision are . . . unsupported by substantial evidence in view of the entire record.” Minn. Stat. § 268.105, subd. 7(d)(5) (2012). We review the ULJ’s findings of fact in the light most favorable to the decision and will not disturb the findings that the record substantially supports. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). We defer to the ULJ’s evaluations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp’t Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

An employee who quit employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1 (2012).¹

- (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.

¹ Howard does not argue that a statutory exception applies, although there is an exception for employees who quit because of serious illness. Minn. Stat. § 268.095, subd. 1(7) (2012).

- (b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, is considered to have quit the employment.

Id., subd. 2 (2012). On the other hand, “[a] discharge from employment 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.”

Id., subd. 5(a) (2012). “Whether an employee has been discharged or voluntarily quit is a question of fact” *Stassen*, 814 N.W.2d at 31.

Howard urges remand because the ULJ reached a decision without making mandatory credibility findings. We agree. Minn. Stat. § 268.105, subd. 1(c) (2012), requires that “[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” When credibility is central to a ULJ’s decision and the ULJ makes no credibility findings, we must remand for findings. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007).

Howard testified that she gave proper notice to ISJH before being absent on the weekend of December 14, while Eggersdorfer testified that he did not receive notice before her absence. Eggersdorfer also testified that ISJH had an attendance policy that Howard had violated 23 times and that “the decision was made . . . that [if Howard] did call in again or miss work again . . . she would be terminated. . . .” But Eggersdorfer further testified that “if [Howard] would have c[o]me in and said that she had a doctor’s note [explaining] why she was in the emergency room, we would have looked into

it” As Eggersdorfer’s testimony was equivocal on whether Howard’s providing a doctor’s note could have altered ISJH’s decision to dismiss Howard for her next work absence, the determination of whether Howard provided a proper excuse for being absent from work had a “significant effect on the outcome of the decision,” and the ULJ’s failure to make the credibility findings to support its decision necessitates a remand for findings.

Remanded.