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A12-2086

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Ulanda D. Wiley,

Relator,

v.

Robert Half International, Inc.,

Respondent-Employer,

and

Minnesota Department of Employment and Economic Development,

Respondent-Department.

RELATOR'S BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUE INVOLVED

Does Ms. Wiley meet the statutory exception criteria to ineligibility for unemployment benefits when a worker separates from unsuitable employment pursuant to Minn. Stat. § 268.095, subdiv. 1(3) (2010) with reference to Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010)?

Disposition Below: The Unemployment Law Judge determined that Ms. Wiley does not meet the statutory exception criteria to ineligibility.

Apposite Authorities:

Minn. Stat. § 268.095, subdiv. 1(3) (2010).

Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010).

Valenty v. Med. Concepts Dev., Inc., 503 N.W.2d 131 (Minn. 1993).

Smith v. Emp'rs' Overload Co., 314 N.W.2d 220 (Minn. 1981).

STATEMENT OF THE CASE

This case addresses the question of whether Ulanda D. Wiley, Realtor, meets the statutory exception criteria to ineligibility for unemployment benefits pursuant to Minn. Stat. § 268.095, subdiv. 1(3) (2010) with reference to Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010). Ms. Wiley first raised this issue in a prior appeal, specifically contending that Unemployment Law Judge Andrew Berninghaus (“ULJ”) failed to consider the exception at her initial evidentiary hearing. *See Wiley v. Robert Half Int’l, Inc.*, No. A11-1616, 2012 WL 2202977, at *3 (Minn. Ct. App. June 18, 2012) [hereinafter *Wiley I*]. This Court agreed and remanded the case for the ULJ to further develop the record. *Id.* On remand, the ULJ misconstrued this Court’s guidance on how the statutory provisions comprising the exception should be interpreted. As a result, this appeal now follows.

On May 3, 2011, Ms. Wiley accepted a job with Robert Half International, Inc. (“Half International”), a temporary staffing service (Findings of Fact and Decision of Unemployment Law Judge, July 15, 2011, at 2, hereinafter “ULJ Decision I”; Add. at 6). On May 27, 2011, less than thirty days after beginning the employment, Ms. Wiley quit and applied for unemployment benefits with the Department of Employment and Economic Development (“DEED”) (*See* ULJ Decision I at 2; Add. at 6). Approximately one month later, DEED issued a “Determination of Ineligibility,” a finding Ms. Wiley appealed (ULJ Decision I at 2; Add. 6).

On July 15, 2011, the ULJ held an evidentiary hearing by telephone conference (ULJ Decision I at 2; Add. at 6). At this hearing, the ULJ heard testimony from Ms.

Wiley and also from Mr. Cory Kanz, a division director for Half International (ULJ Decision I at 2; Add. at 6).¹ Subsequent to the hearing, the ULJ determined that Ms. Wiley was ineligible for unemployment benefits pursuant to Minn. Stat. § 268.095, subdiv. 1(1) (2010), which provides an exception to ineligibility for individuals who quit employment because of a good reason attributable to his or her employer (ULJ Decision I at 3; Add. at 7). The ULJ also concluded that “[n]o other exceptions to ineligibility apply” (ULJ Decision I at 5; Add. at 9). Ms. Wiley immediately requested reconsideration (*See* Order of Unemployment Law Judge, August 11, 2011, at 2, hereinafter “ULJ Order I”; Add. at 12). However, the ULJ affirmed his decision, finding it was “factually and legally correct” (ULJ Order I at 2; Add. at 12). Ms. Wiley obtained a writ of certiorari, pursuant to Minn. Stat. § 268.105, subdiv. 7 (2010) and Minn. R. Civ. App. P. 115, for this Court to review the ULJ’s findings and conclusions.

Ms. Wiley raised two issues on appeal. First, she contended that the ULJ erred in ruling that she did not quit because of a good reason attributable to Half International. *Wiley I*, 2012 WL 2202977, at *2. Second, she argued that the ULJ failed to consider whether she was eligible for benefits pursuant to Minn. Stat. § 268.095, subdiv. 1(3) (2010), which provides an exception to ineligibility for an individual who quits within thirty days of beginning employment because it is unsuitable. *Wiley I*, 2012 WL 2202977, at *2. “Suitable employment” is a defined term in the Minnesota Unemployment Compensation statute and provides four situations as to when

¹ Please note that Half International is also referred to as Accountemps throughout the record. Any reference to Half International in this brief includes both entities.

employment is deemed unsuitable as a matter of law. *See* Minn. Stat. § 268.035, subdiv. 23a(g) (2010). Ms. Wiley contended that her case comported with the situation illustrated in 23a(g)(4), which provides that employment is unsuitable if it is “with a staffing service and less than 45 percent of the applicant’s wage credits are from a job assignment with the client of a staffing service.” *See* Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010). At oral argument, DEED conceded that Ms. Wiley quit employment that was unsuitable as a matter of law. *Wiley I*, 2012 WL 2202977, at *3. However, DEED argued that the unsuitable employment exception at issue also required her to quit the employment *because* it was unsuitable. *Id.*

This Court decided, first, that Ms. Wiley did not quit because of a good reason attributable to Half International. *Id.* at *2. With respect to Ms. Wiley’s second argument, this Court began its analysis by recognizing the policy rationale underlying the unsuitable employment exception at issue, noting it “encourages those who are unemployed to attempt a new job outside their usual field of work or to accept part-time or temporary employment, even though the job from which they most recently separated was full time.” *Id.* (citing *Valenty v. Med. Concepts Dev., Inc.*, 503 N.W.2d 131 (Minn. 1993)). This Court then considered DEED’s interpretation of the statutory provisions and concluded that there is “no basis for [the] argument that the two definitional provisions must be read and applied in tandem rather than separately, as the text suggests.” *Wiley I*, 2012 WL 2202977, at *3. After reaching this conclusion, this Court remanded the case for the ULJ to further develop the record in order to “make findings on the suitability of

[Ms.] Wiley's employment with Handi Medical or the applicability of the unsuitable employment exception." *Id.*

On August 9, 2012, the ULJ held a second evidentiary hearing where he again heard testimony from Ms. Wiley and Mr. Kanz (Findings of Fact and Decision of Unemployment Law Judge, September 7, 2012, at 2, hereinafter "ULJ Decision II"; Add. at 17). After this hearing, the ULJ determined that Ms. Wiley was ineligible for unemployment benefits, concluding that while Ms. Wiley quit employment that was unsuitable as a matter of law, she did not quit *because* the employment was unsuitable (ULJ Decision II at 6; Add. at 21). On November 19, 2012, Ms. Wiley obtained a writ of certiorari, pursuant to Minn. Stat. § 268.105, subdiv. 7 (2010) and Minn. R. Civ. App. P. 115, for this Court to review the ULJ's findings and conclusions.

STATEMENT OF THE FACTS

In April 2010, Ms. Wiley was employed full time with HealthEast as a billing specialist—a position she had maintained for nearly four years (ULJ Decision II at 2; Add. at 17; Transcript of the Second Evidentiary Hearing, at 16, hereinafter TII). As a billing specialist, Ms. Wiley focused primarily on “secondary billing” (TII at 16). In the medical billing industry, secondary billing involves collecting bills from insurance companies and correcting errors (TII at 29–30). In contrast, “primary billing” involves billing Medicare and requires knowledge of federal guidelines to avoid penalties (TII at 21, 30). Ms. Wiley did not have a background in either primary or secondary billing prior to her employment with HealthEast (TII at 17). However, HealthEast provided Ms. Wiley with on-the-job training in secondary billing so that she could effectively perform her role (TII at 17). Unfortunately, on April 23, 2010, Ms. Wiley was laid off (ULJ Decision II at 2; Add. at 17). She applied for and was deemed eligible to receive unemployment benefits (ULJ Decision II at 2; Add. at 17).²

After being laid off, Ms. Wiley spent nearly a year looking for work similar to her full-time position at HealthEast (TII at 29). When these efforts proved unsuccessful, Ms. Wiley accepted a position with Half International, a temporary staffing service (ULJ Decision II at 3; Add. at 18). Half International assigned Ms. Wiley to a temporary medical billing position with Handi Medical where she performed primary billing (TII at

² As a result of her employment with HealthEast, none of Ms. Wiley’s wage credits are from the job assignment with the client of a staffing service (Ex. 15; Add. at 38).

18). Half International made it clear to Ms. Wiley that the position with Handi Medical would not be temp-to-hire (TII at 18).

Ms. Wiley's employment with Half International was fraught with difficulties and, on May 27, 2010, less than thirty days after beginning the employment, these difficulties forced her to quit. Ms. Wiley has consistently testified from the time she applied for benefits to the present that she quit Half International for two over-arching reasons (*See* Ex. 5; Ex. 11; Add. at 29–31, 32–37). She quit because she was uncomfortable in the work environment and because she was not being paid on time and in the correct amount (Ex. 5; Ex. 11; Add. at 29–31, 32–37). Ms. Wiley reiterated these two over-arching reasons at her first evidentiary hearing (*See* Transcript of the First Evidentiary Hearing, at 10, hereinafter TI). The ULJ's focus at this hearing, however, was clearly the payroll issues (*See generally* TI).

At the first evidentiary hearing, Ms. Wiley explained to the ULJ that she began her assignment with Handi Medical on May 3, 2011 and worked approximately thirty-one hours that first week (TI at 12–13, 25). Half International should have compensated Ms. Wiley the next Monday, May 9th, but she did not receive a paycheck when it was due (ULJ Decision II at 3; Add. at 18). The next Monday, May 16th, Half International issued Ms. Wiley her first paycheck (ULJ Decision II at 3; Add. at 18). However, this paycheck did not include wages from her first week of work (ULJ Decision II at 3; Add. at 18). Ms. Wiley was issued a second paycheck the next day but again did not receive all the wages owed to her—a full day's pay was missing (ULJ Decision II at 3; Add. at 18).

Despite not being paid in a timely manner, Ms. Wiley continued to work at Handi Medical and made numerous efforts over the span of four weeks to remedy the situation (TI at 12–14). Ms. Wiley was forced to work with both Half International and Handi Medical simply to obtain her weekly paycheck (TI at 12–14). In fact, Ms. Wiley testified that she contacted Handi Medical’s customer service department on five different occasions, outside her working hours, to resolve this issue (TI at 13). Ms. Wiley learned, only through communication with Half International, that her supervisor at Handi Medical was causing the delay by making improper notations on her time card (TI at 13–14).

These payroll issues were significant and clearly the focus of the ULJ’s questioning at this first evidentiary hearing, but Ms. Wiley also testified that her position with Half International was unsatisfactory for several reasons. She told the ULJ that she had never worked for a temporary staffing service and was unfamiliar with this employment setting (TI at 18). She also testified about her discomfort with the fact that her direct supervisor at Handi Medical would not communicate with her (TI at 23–24). Ms. Wiley was particularly uncomfortable hearing from others that this supervisor was not satisfied with her work performance (TI at 22). Since this supervisor would not speak with her directly, Ms. Wiley found herself expressing her frustration with the position to Half International employees as well as her co-workers at Handi Medical (TI at 23–24). While the ULJ elicited this testimony from Ms. Wiley at the first evidentiary hearing, he concluded that these concerns did not constitute a good reason to quit attributable to Half International (ULJ Decision I at 5; Add. at 9).

As stated, Ms. Wiley appealed the ULJ's decision, bringing two issues before this Court. *Wiley I*, 2012 WL 2202977, at *1. She contended that the payroll issues constituted a good reason to quit and also that she was eligible for benefits pursuant to the unsuitable employment exception. *Id.* In support of the latter assertion, Ms. Wiley submitted documentation demonstrating that she met the exception's technical requirements (*See* Relator's Br. and Add., Add. at 20, *Wiley I*, 2012 WL 2202977 (No. A11-1616)). This Court rejected her first contention. *Wiley I*, 2012 WL 2202977, at *1. However, it concluded that the record had not been sufficiently developed to determine whether she was eligible for benefits under the second. *Id.* at *3. Therefore, this Court directed the ULJ to conduct a second evidentiary hearing to further explore the issue. *Id.*

Ms. Wiley testified at this second evidentiary hearing about why she was uncomfortable with the temporary employment at Half International. For the first time, she was provided with the opportunity to explain the difference between her job at HealthEast and her job at Handi Medical (*See* TII at 16-18, 29). Ms. Wiley told the ULJ that when she started with HealthEast she did not have the training required to perform secondary billing (TII at 17). However, HealthEast provided the requisite training for her to effectively perform her role (TII at 17). This was not the case at Handi Medical. Ms. Wiley explained that primary billing is different than secondary billing and that she did not have sufficient experience with the federal guidelines in order to accomplish her tasks (TII at 30). She clearly stated she was willing to learn but was not able to express that desire to her direct supervisor—again, a supervisor who would not communicate with her

(TII at 30). Ms. Wiley testified, “She would not talk to me directly about what she needed on the bills, what she needed done” (TII at 30).

This fractured line of communication was the source of additional concerns. Ms. Wiley elaborated on this issue at the second evidentiary hearing, stating:

[My] supervisor [contacted] Robert Half and let them know that she was not satisfied with my performance without letting me know anything. So they contacted me to tell me that and I told them at the time that I was awful uncomfortable in the position because I’m not, she’s not giving, communicating with anything that she needs, you know for me to do. I’m not getting the training that’s needed.

(TII at 21). This communication breakdown also extended to Ms. Wiley’s struggles to get paid on time and in the correct amount (TII at 26–27). She testified, just as she did at the first hearing, that she had to communicate with two entities simply to obtain her weekly paycheck (TII at 27). These problems took a toll on Ms. Wiley. Eventually, she decided that her only recourse was to quit in an effort to find more stable, suitable employment. Ultimately, Ms. Wiley quit because she was not being paid on time and in the correct amount but also because she was dissatisfied working for a temporary staffing service (*See* Ex. 5; Ex. 11; Add. at 29–31, 32–37).

While this Court provided Ms. Wiley the opportunity to explain why she was uncomfortable in her position with Handi Medical, the ULJ adopted DEED’s interpretation of the unsuitable employment exception and concluded that Ms. Wiley did not quit *because* the employment was unsuitable. Instead, the ULJ determined that Ms. Wiley quit because of “a single payroll error, a personality conflict with her supervisor,” and “primarily” to obtain “benefits from multiple government programs” (ULJ Decision

II at 6; Add. at 21). Therefore, the ULJ determined that Ms. Wiley was ineligible for benefits.

STANDARD OF REVIEW

This Court reviews a ULJ's decision regarding eligibility for unemployment benefits to determine whether substantial rights were prejudiced because the findings, inferences, conclusions, or decisions are affected by errors of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subdiv. 7(d) (2010). This Court reviews findings in the light most favorable to the decision and will defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. Ct. App. 2006). This Court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. Ct. App. 2008); Minn. Stat. § 268.105, subdiv. 7(d) (2010). However, determining "[w]hether a claimant is properly disqualified from the receipt of unemployment benefits is a question of law, which this [C]ourt reviews de novo." *Hayes v. K-Mart, Corp.*, 665 N.W.2d 550, 552 (Minn. Ct. App. 2003) (review denied Sept. 24, 2003).

ARGUMENT

I. THE PLAIN LANGUAGE OF THE UNSUITABLE EMPLOYMENT EXCEPTION AT ISSUE, COUPLED WITH THE POLICY RATIONALE PREVIOUSLY ARTICULATED BY THIS COURT, LEADS TO THE CONCLUSION THAT MS. WILEY IS ELIGIBLE FOR UNEMPLOYMENT BENEFITS.

Minnesota's Unemployment Compensation statute provides that an individual who quits his or her employment is generally ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subdiv. 1 (2010). This rule, however, is subject to several exceptions. *Id.* One of these exceptions provides that an individual is eligible for unemployment benefits if he or she quits "within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant." Minn. Stat. § 268.095, subdiv. 1(3) (2010). Employment is considered unsuitable as a matter of law if it is "with a staffing service and less than 45 percent of the applicant's wage credits are from a job assignment with the client of a staffing service."³ Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010). This Court recognized in *Wiley I* that the purpose of the unsuitable employment exception is to "encourage those who are unemployed to attempt a new job outside of their usual field of work or to accept part-time or temporary employment, even though the job from which they were most recently separated was full time." *Wiley I*, 2012 WL 2202977, at *3 (citing *Valenty*, 503 N.W.2d 131).

³ The statutory provision currently in effect applies when less than twenty-five percent of an applicant's wage credits are from a job assignment with the client of a staffing service. *See* Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2012). The effective date of this amendment is August 1, 2011. Because Ms. Wiley was determined to be ineligible for unemployment benefits on July 1, 2011, the 2010 statute governs her claim. *See Wiley I*, 2012 WL 2202977, at *3 n.1.

Both the plain language of the statutory provision and the policy rationale articulated by this Court lead to the conclusion that Ms. Wiley is eligible for unemployment benefits. It is undisputed that Ms. Wiley quit employment that was unsuitable as a matter of law (*See* Ex. 15; ULJ Decision II at 6; Add. at 21). Ms. Wiley also clearly testified that she accepted the position with Half International only after searching for full-time, permanent employment for nearly one year. The plain language of this statutory exception is not designed to penalize her for suffering a setback in her effort to become reemployed. Rather, a plain language reading, supported by this Court's policy rationale, leads to the conclusion that the legislature intended to create a safe harbor for individuals to try new employment or to accept temporary employment with a staffing service in an effort to once again become self-sufficient. This is exactly what Ms. Wiley did here.

The ULJ's interpretation of this statutory exception, however, leads to a result that is fundamentally at odds with this reasoning. The ULJ determined that the statutory provisions must be read to require a causal connection, i.e., that Ms. Wiley was required to quit her employment with Half International *because*, or "for the reason that," it was unsuitable. The ULJ reached this result despite the fact that in *Wiley I* this Court clearly stated that it could "find no basis for DEED's argument that the two definitional provisions must be read and applied in tandem rather than separately, as the text suggests." *Wiley I*, 2012 WL 2202977, at *3. This interpretation is problematic for a fundamental reason: it undermines both the plain language and the policy rationale underlying this exception.

Under DEED's interpretation, Ms. Wiley is eligible for benefits only if she quit her employment with Half International, one, *because* it was with a staffing service and, two, *because* less than forty-five percent of her wage credits are from a job assignment with the client of a staffing service. See Minn. Stat. § 268.095, subdiv. 1(3) (2010); Minn. Stat. § 268.035, subdiv. 23a(g)(4) (2010). While it is plausible that an individual might quit employment because it is with a staffing service, it is unreasonable to believe that anyone would quit employment *because* less than forty-five percent of his or her wage credits are from a job assignment with the client of a staffing service. Under DEED's interpretation, no one would be eligible for benefits pursuant to this exception. It is irrational to assume the legislature intended individuals not only account for his or her wage credits while employed in a particular position but to also decide whether to leave that position on the basis of those wage credits. Rather, as this Court previously observed, the legislature intended to create a safe harbor to encourage individuals to try new employment to once again become self-sufficient. Again, this is exactly what Ms. Wiley did here.

This safe harbor policy rationale also finds significant support in the case law interpreting the statutory exception. The provision was initially enacted in 1980, *see* An Act of April 7, 1980, ch. 508, § 9, 1980 Minn. Laws 463, 479, and, shortly thereafter, the Minnesota Supreme Court was confronted with its application in a case presenting facts similar to the present controversy. In *Smith v. Employers' Overload Co.*, two individuals were separated from full-time, permanent employment for non-disqualifying reasons. 314 N.W.2d 220, 221 (Minn. 1981). After a period of time, both individuals accepted

employment with a temporary staffing service. *Id.* However, both individuals quit their employment within one week. *Id.* In reversing a finding of ineligibility, the court first referenced the 1980 amendment as indicative of the legislature's intent to treat employment with a temporary staffing service different than full-time, permanent employment. *Id.* The court then took this analysis a step further, explaining that "[d]isqualifying a person for working at a temporary position is inherently contrary to the policies of the statute." *Id.* at 223 (quoting *Loftis v. Legionville Sch. Safety Patrol Training Ctr., Inc.*, 297 N.W.2d 237, 239 n.5 (Minn. 1980)). "[I]t would require us to claim that a person was at fault by accepting temporary employment, a conclusion we were unwilling to reach [previously]." *Id.*

Eleven years after *Smith*, this Court addressed a similar situation in *Valenty v. Medical Concepts Development, Inc.*, 491 N.W.2d 679 (Minn. Ct. App. 1992). In that case, Joan Valenty had been a registered dental assistant before becoming unemployed. *Id.* at 680. She applied for and was found to be eligible to receive unemployment benefits. *Id.* Several months later, the Department referred Valenty to a job with Medical Concepts Development. *Id.* The position involved light manufacturing, a type of work Valenty had not previously performed. *Id.* She accepted the position but quit the same day she started because the work caused significant trauma to her back. *Id.* The Department disqualified Ms. Valenty from receiving benefits because it concluded that she quit without good cause attributable to Medical Concepts Development. *Id.* This Court reversed, first finding that the position was unsuitable as a matter of law. *Id.* It then considered the unsuitable employment exception and reasoned that the legislature

could not have “intended the unfortunate result of disallowing unemployment benefits to an employee who has attempted unsuitable work in an effort to remove herself from the ranks of the unemployed.” *Id.*

The Minnesota Supreme Court pointed to the same policy rationale in affirming this Court’s decision. *See Valenty*, 503 N.W.2d at 132. The Department warned the supreme court that adopting this interpretation “would effectively allow a trial period for any new employee in an unsuitable job to determine whether the employee found the job acceptable, without fear of losing unemployment benefits if the employee decided to quit.” *Id.* at 134. The court stated “[t]here is no doubt that this is true.” *Id.* It went on to explain:

The rationale for our decision today is simple: a person receiving unemployment benefits should not be penalized for taking an unsuitable job for a short period of time. A contrary holding would discourage those persons receiving benefits from attempting any job that was not technically ‘suitable’ within the statute. We view such a result contrary to public policy.

Id. The court was further persuaded by the policy rationale it had previously articulated. Specifically, the court recognized that “the unemployment compensation statute is remedial in nature and should be construed liberally to carry out the public policy of Minn. Stat. § 268.03 (1992) that unemployment should be paid only to those persons ‘unemployed through no fault of their own.’” *Id.* As a result, the court concluded that the disqualification provision at issue “should be construed narrowly.” *Id.* at 135.

Throughout the years, the unsuitable employment exception has been amended as the unemployment compensation statute has evolved. The exception at issue in this case

took its present form in 2010, when the legislature added Minn. Stat. § 268.035, subdiv. 23a(g)(4) to the list of situations in which employment is deemed unsuitable as a matter of law. An Act of May 14, 2010, ch. 347, art. II, § 4, 2010 Minn. Laws 1055, 1081. This amendment re-codifies the legislature's intent, as it has been articulated, to provide a safe harbor for individuals to try new employment, outside his or her prior training and experience, or to accept part-time or temporary employment in an effort to once again become self-sufficient. *See Wiley I*, 2012 WL 2202977, at *3 (citing *Valenty*, 503 N.W.2d 131).

The result is that DEED's interpretation is fundamentally at odds with the legislative intent supporting this exception. Both the plain language and the policy rationale, as articulated by Minnesota courts, lead to the conclusion that the legislature intended individuals to be eligible for benefits so long as the person (1) is employed by a staffing service, (2) quit within thirty days of beginning the employment, and (3) less than forty-five percent of his or her wage credits are from a job assignment with the client of a staffing service. DEED's interpretation demonstrates the unfortunate result of imposing an exacting interpretation on causal language comprising a technical statutory exception. The statutes *are not* designed to provide benefits to an individual who quits employment because his or her wage credits are below a certain level. Rather, the provisions are designed to encourage individuals to try a staffing service in an effort to once again become self-sufficient. Only this interpretation is consistent with the underlying purpose of providing unemployment compensation in the first place—to provide “workers who are unemployed through no fault of their own a temporary partial

wage replacement to assist the unemployed worker *to become reemployed.*” See Minn. Stat. § 268.03, subdiv. 1 (2010) (emphasis added).

Overall, the plain language and the policy rationale underlying the statutory exception point to the conclusion that Ms. Wiley is eligible for unemployment benefits. It is undisputed that she quit employment that was unsuitable as a matter of law within thirty days of beginning that employment (*See* Ex. 15; ULJ Decision II at 6; Add. at 38, 21). Ms. Wiley also made it clear at the remand hearing that she accepted the temporary position with Half International only after searching for another full-time position for approximately one year. It would be at odds with the Minnesota Unemployment Compensation statute to penalize her for trying to once again become self-sufficient. Therefore, this Court should reverse the ULJ’s determination and find that Ms. Wiley is eligible for unemployment benefits.

II. MS. WILEY ALSO QUIT HER EMPLOYMENT WITH HALF INTERNATIONAL *BECAUSE* IT WAS UNSUITABLE.

Even accepting DEED’s interpretation, the evidence adduced at both of Ms. Wiley’s evidentiary hearings shows that that she quit *because* the employment with Half International was unsuitable.⁴ Ms. Wiley testified that she was uncomfortable with the lack of training, with the disconnected lines of communication, and with not being paid on time and in the correct amount. The common thread tying this discomfort together is the unique experience of employment with a temporary staffing service.

⁴ Ms. Wiley concedes that there is an absence of evidence in the record establishing that she quit *because* less than forty-five percent of her wage credits were from a job assignment with the client of a staffing service.

Ms. Wiley testified that she did not have adequate training for her placement at Handi Medical. Her prior experience in medical billing was secondary billing, which is different than the primary billing she performed at Handi Medical. She felt that she had neither the training nor experience that was required to meet the federal guidelines. Ms. Wiley was discouraged with this lack of training, and her supervisor at Handi Medical made matters worse. This supervisor would not communicate directly with Ms. Wiley regarding this training or provide her with direction as to how she should perform her daily tasks. Instead, Ms. Wiley was forced to communicate with this supervisor through Half International employees.

Ms. Wiley also testified that she left Half International because she was not being paid on time and in the correct amount. The main reason she was not receiving compensation owed was the fact that her direct supervisor at Handi Medical was making improper notations on her timecard. Ms. Wiley contacted Handi Medical's payroll department on five different occasions, outside her working hours, to resolve the issue. She learned, only through Half International's customer service department, that her supervisor at Handi Medical was not complying with timecard policies. Ms. Wiley explained that it was frustrating to work with two entities on numerous occasions to find out what was causing the delay and also how to fix it.

The common thread tying together this discomfort is the unique experience of employment with a temporary staffing service. Ms. Wiley explained the position was untenable because of the disconnected lines of communication. Ms. Wiley could not get the information she needed to learn how to do her job, understand if she was doing her

job correctly, or get paid. She stated that it was particularly concerning hearing that her supervisor at Handi Medical was dissatisfied with her work only through Half International employees. She explained, “I was uncomfortable in the position because . . . [my supervisor was] not communicating with me.” Ms. Wiley also testified that working with two entities just to obtain a paycheck was challenging. Beyond the lack of communication, Ms. Wiley also felt that she did not have adequate training to complete her job. Ms. Wiley was trained for her position at HealthEast, but at Handi Medical she was expected to know how to perform unfamiliar billing operations. The source of these concerns is found in the special demands of employment with a staffing service. There is no doubt that communicating with a supervisor, receiving a paycheck, and acquiring adequate training in a full-time position can be challenging, but at least the process is streamlined. The source of Ms. Wiley’s discomfort with Half International was the unique challenge of the employment with a temporary staffing service. Ms. Wiley quit *because* the employment was unsuitable.

This Court has also looked directly at the employment history of the employee in determining whether a temporary position is suitable employment. *See Mbong v. New Horizons Nursing*, 608 N.W.2d 890, 893 (Minn. Ct. App. 2000) (*comparing Henry v. Dolphin Temp. Help Servs.*, 386 N.W.2d 277, 281 (Minn. Ct. App. 1986) (finding short-term jobs offered by temporary agency wholly inconsistent with sixteen-year history of full-time employment of relator, who was looking actively for permanent, full-time employment), *with Vejdani v. Western Temp. Servs., Inc.*, 486 N.W.2d 461, 462–63 (Minn. Ct. App. 1992) (finding temporary assignment suitable offer when relator worked

primarily for temporary agencies during base period and there was no evidence she wanted a permanent full-time position)). In this case, Ms. Wiley worked full time for four years prior to being laid off. She accepted a position with a temporary staffing service but quit because she found the position unsatisfactory when she was not compensated on time, when she was not provided with adequate training, and when she was forced to work with two entities to obtain compensation owed to her. Ms. Wiley quit because of the nature of temporary employment with a staffing service.

It must also be pointed out the ULJ's credibility determination on remand is simply not supported by the record. Ms. Wiley has consistently explained that she quit Half International because she was uncomfortable in the position and was not being paid on time and in the correct amount (*See* Ex. 5; Ex. 11; Add. at 29–31, 32–37). In the first appeal, this Court recognized that the ULJ did not adequately develop the record as there were some—but likely more—facts supporting the unsuitable employment exception at issue in this case. These are facts that go directly to Ms. Wiley's discomfort with her position at Handi Medical. Therefore, this Court remanded the case for the ULJ to further consider the facts that he elicited—but failed to follow up on—at the first evidentiary hearing. The ULJ conducted this second hearing and further inquired of Ms. Wiley as to why she left the position with Half International. After this hearing, the ULJ used his failure to fully develop the record against Ms. Wiley, stating her testimony was “inconsistent” with the first hearing. Ms. Wiley's testimony is not inconsistent. She has consistently testified that she quit because she was uncomfortable in the employment and because she was not being paid on time and in the correct amount. The record before this

Court simply does not support the ULJ's credibility finding. It is unjust to allow the ULJ to use the procedural posture of this case against Ms. Wiley.

The bottom line is that the record in this case provides ample support for the contention that Ms. Wiley quit because she found employment with this temporary staffing service to be unbearable. She testified that working with two entities was challenging. She also was not provided with adequate training to perform her role, likely because the position was not temp-to-hire. It was a short-term position and was unsuitable for Ms. Wiley who desired a full-time, permanent position. Therefore, if this Court accepts DEED's interpretation of the unsuitable employment exception to ineligibility, it should also determine that Ms. Wiley quit *because* the employment was unsuitable.

CONCLUSION

The plain language and the policy rationale underlying the unsuitable employment exception at issue in this case demonstrate that Ms. Wiley is eligible for unemployment benefits. It is undisputed that Ms. Wiley quit employment that was unsuitable as a matter of law within thirty days of beginning that employment. That is enough to make her eligible for unemployment benefits. However, even if this Court agrees with DEED's construction of the unsuitable employment exception, it is also clear that Ms. Wiley quit employment with Half International *because* it was unsuitable. Under either reading, the record has been sufficiently developed to reverse the ULJ's decision and find that Ms. Wiley is eligible for unemployment benefits.

Dated: February 11, 2013

Respectfully Submitted,

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A12-2086

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Ulanda D. Wiley,

Appellant/Relator,

v.

Robert Half International, Inc.,

Respondent-Employer,

and

Minnesota Department of Employment
and Economic Development,

Respondent-Department.

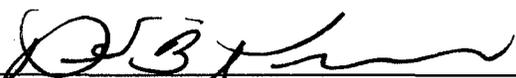
**CERTIFICATE OF
BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subdiv. 1 and 3 for a brief produced with a proportional font. The length of this brief is 5777 words. This brief was prepared using Microsoft Word 2010.

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