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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2075**

Janine M. Bailey,
Relator,

vs.

American Crystal Sugar Company Cooperative,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 17, 2012
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 28520034-2

Janine M. Bailey, Grand Forks, North Dakota, (pro se relator)

James M. Dawson, Ryan A. Olson, Felhaber, Larson, Fenlon & Vogt, P.A., Minneapolis,
Minnesota (for respondent employer)

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

Considered and decided by Ross, Presiding Judge; Hooten, Judge; and Toussaint,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Janine Bailey applied to the department of employment and economic development for and was deemed eligible to receive unemployment benefits after she was suspended from her employment with American Crystal Sugar Company Cooperative on June 11, 2011. American Crystal appealed the determination. After a hearing, an unemployment law judge (ULJ) concluded that Bailey was eligible for unemployment benefits from June 11, 2011, to June 28, 2011, but that she was ineligible for unemployment benefits from June 29 through July 13 because she was on a voluntary leave of absence. Bailey requested reconsideration but the ULJ affirmed her previous decision. Bailey appeals to this court by writ of certiorari, arguing that she was not on a voluntary leave of absence from June 29 through July 13 and is therefore eligible for benefits. Because the ULJ did not err by denying Bailey benefits from June 29 through July 13, we affirm.

FACTS

Janine Bailey began working for American Crystal Sugar Company Cooperative in 2000. Her employment was suspended on June 11, 2011, after she failed to report a molasses spill. During Bailey's suspension, she applied to Minnesota Department of Employment and Economic Development for unemployment benefits. On June 30, 2011, the department determined that Bailey was eligible for unemployment benefits between June 11, 2011, and July 11, 2011.

American Crystal appealed the department's eligibility determination. It contended that Bailey had been indefinitely suspended on June 11 to facilitate the investigation of the molasses spill and that the investigation revealed that Bailey had failed to report the incident and that she had given false information to her supervisor. American Crystal stated that it was prepared to discharge her for these violations unless she agreed to the terms of a last-chance agreement.

American Crystal's human resources representative, Amanda Griffin, testified at a hearing before a ULJ that American Crystal had attempted to contact Bailey to return her to work beginning on June 29, that it left messages for Bailey, and that American Crystal did not hear back from her until July 6. At that time Bailey said she was unable to meet until July 13 for personal reasons. Griffin also pointed out that under the proposed last-chance agreement, Bailey would "be issued a disciplinary suspension from June 11, 2011, through June 29, 2011." Bailey did not dispute Griffin's testimony.

The ULJ concluded that Bailey was eligible for unemployment benefits from June 11, 2011, to June 27, 2011, but that beginning June 28, work was available for Bailey on the condition that she sign the last-chance agreement. The ULJ also concluded that because Bailey chose not to work between June 28 and July 13, she was on a voluntary leave of absence and ineligible for benefits under Minnesota Statutes section 268.085, subdivision 13a (2010).¹

¹ The ULJ used June 28 as the starting date of Bailey's voluntary leave of absence in its decision. But in the ULJ's reconsideration decision, the ULJ used June 29. The record indicates that June 29 is the correct date.

Bailey filed a request for reconsideration challenging the ULJ's determination that she was on voluntary leave. She contended that her leave was not voluntary because she had been indefinitely suspended and was not allowed on company grounds until further notice. Bailey acknowledged that she had received a call on June 28, 2011, from Beth Lopez, American Crystal's employee relations coordinator, and that Lopez had left a message to return her call; but she alleged that Lopez stated nothing else, that she returned the call immediately, and that she was unaware of any available work.

The ULJ affirmed her decision and specifically found credible the employer's testimony that Bailey had been informed in the June 28 call that she could return to work. She held that Bailey had chosen to wait and not speak to American Crystal until July 13 when her union could be involved and that there had been work available to Bailey that she chose not to perform.

Bailey appeals by writ of certiorari.

D E C I S I O N

Our decision is limited to the issues presented to the ULJ; we recognize that Bailey raised two related cases before the court of appeals: *Bailey v. Am. Crystal Sugar Co.*, A11-2074 and *Bailey v. Am. Crystal Sugar Co.*, A11-2275.

Bailey argues that the ULJ erred by determining that she was on voluntary leave between June 29, 2011, and July 13, 2011. We may remand, reverse, or modify a ULJ's decision if the relator's substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, that is made on unlawful procedure, or that is arbitrary and capricious. Minn. Stat.

§ 268.105, subd. 7(d)(3)–(6) (2010). We view the ULJ’s fact findings in the light most favorable to the decision and give deference to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Bailey contends that the ULJ erroneously found that her leave from work was not voluntary. Her argument does not persuade us to reverse. A leave of absence can be voluntary or involuntary. Minn. Stat. § 268.085, subd. 13a(a) (2010). “An applicant on a voluntary leave of absence is ineligible for unemployment benefits for the duration of the leave of absence,” but an applicant on an involuntary leave of absence is eligible for benefits. *Id.* “A leave of absence is voluntary when work that the applicant can then perform is available with the applicant’s employer but the applicant chooses not to work.” *Id.*

Bailey disputes the ULJ’s finding that she was given notice by American Crystal on June 28, 2011, that she could return to work. She asserts that although she got a message from Lopez on June 28, Lopez never mentioned a return to work. But we do not find facts on appeal, and the ULJ credited Griffin’s testimony that American Crystal had attempted to contact Bailey to summon her back to work beginning June 29, that it did not hear back from her until July 6, and that Bailey chose not to meet with American Crystal until July 13. We give deference to the ULJ’s credibility determinations. *See Skarhus*, 721 N.W.2d at 344.

The record supports the ULJ’s findings. A July 19, 2011 letter from Griffin to Bailey stated that American Crystal had tried to contact her beginning June 29 and that she did not respond until July 6, 2011, and the proposed last-chance agreement stated that

Bailey's disciplinary suspension was from June 11, 2011 until June 29, 2011, if she accepted the terms of the agreement.

Bailey also maintains that she could not have returned to work before July 13 because in order to return to work she had to sign the last-chance agreement, which she did not receive until July 13. But again, the ULJ credited Griffin's testimony that it was Bailey who chose to be unavailable and not to speak to American Crystal until July 13.

Viewing the evidence in the light most favorable to the ULJ's decision, the ULJ did not err by determining that Bailey is ineligible for unemployment benefits because she was on a voluntary leave of absence from June 29, 2011 through July 13, 2011.

Bailey also appears to raise an argument about her medical leave that began on July 14. But the ULJ noted in her September 8, 2011 decision that she did not make a decision regarding Bailey's eligibility for benefits after July 13, 2011. We therefore do not address the issue.

Affirmed.