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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0524**

Joanne M. Allman,  
Relator,

vs.

Sheet Metal Workers Federal Credit Union,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 21, 2009  
Reversed and remanded  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 20166483-3

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Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.\*

## UNPUBLISHED OPINION

**LANSING**, Judge

In this appeal by writ of certiorari from an unemployment-law judge's determination that Joanne Allman is ineligible for unemployment benefits, Allman seeks review of both the ineligibility determination and the denial of her request for reconsideration. Reviewing the decision in light of the requirements of Minn. Stat. § 268.105, subds. 1, 2 (Supp. 2007), we conclude that Allman had good cause for not presenting medical documentation at the initial hearing and that this documentation is directly relevant to the ineligibility decision. We, therefore, reverse and remand for an additional evidentiary hearing.

## FACTS

Joanne Allman began her employment at Sheet Metal Workers Federal Credit Union (SMWFCU) in 2004 as a member-service associate and was later promoted to the position of financial-services officer. Allman exhausted her vacation and sick-leave allotment in the summer of 2007 for absences caused by tension headaches, high blood pressure, and depression. Because Allman's condition continued to require time off, SMWFCU granted her a leave of absence, which started on September 14, 2007.

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

Allman's doctor approved her return to work on October 10, 2007, and SMWFCU assigned her to a member-service-associate position on October 15. Upon her return, SMWFCU required Allman to sign a written warning relating to absences. The warning stated, "Any future absenteeism during the next [sixty] days . . . may be grounds for termination."

The day after she returned to work, Allman became upset when a supervisor failed to include her in a group signing a birthday card for a co-employee. The minor workplace slight triggered the beginning of a tension headache, and Allman arranged an early lunch to try to prevent the symptoms from further developing. The headache got worse, and Allman called her supervisor during lunch to tell her that she was too ill to work the rest of the day. Allman did not go to her doctor but took pain medication at home. When Allman called her supervisor later in the day, the supervisor told her that her midday departure was "a form of resignation." SMWFCU then sent Allman a letter confirming "the acceptance of [her] voluntary resignation."

Allman applied for unemployment benefits. The Department of Employment and Economic Development (DEED) determined that she was ineligible because she quit her employment. Allman requested an evidentiary hearing before an unemployment-law judge (ULJ). SMWFCU took no part in the hearing. At the beginning of the taped proceeding, the ULJ stated that the hearing was an appeal from a determination that Allman quit without having a good reason caused by the employer. The ULJ then indicated that the issue was "what the reasons were for the separation from employment," and briefly referred to discharge and employment misconduct. Allman, who was

unrepresented and who was the only witness, testified to what happened on October 16. She consistently stated that she did not quit but left because she was ill. The ULJ asked Allman whether SMWFCU had provided her with any reasons for her discharge, and Allman responded, “No. They said I quit.” Throughout the hearing, Allman maintained that she had not quit and, other than the ULJ’s brief, initial reference to misconduct, the issue was not raised during the hearing.

Following the hearing, the ULJ issued findings of fact and a decision concluding that Allman did not quit her employment. Instead, the ULJ concluded that Allman had committed employment misconduct because she was “not actually ill” on October 16, 2007; had provided “illegitimate reasons” for leaving work; and “could no longer be trusted.” Based on these findings and conclusions, the ULJ determined that Allman was ineligible for benefits. When Allman received the decision that was based on a determination about her medical condition rather than whether she had quit her employment, she requested reconsideration and an additional evidentiary hearing. Allman submitted her medical documentation to support her statements about her medical condition. The ULJ determined that no good cause existed for failing to submit this evidence at the initial hearing and that the documentation would not “tend[] to suggest that there was a bona fide medical reason or excuse” for Allman not remaining at work on October 16.

## **D E C I S I O N**

We review a ULJ’s decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error

of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). Based on that review, we may affirm, reverse, or modify the ULJ's decision, and we may also remand the case for further proceedings. *Id.* In reviewing the denial of a request for reconsideration, we consider that the ULJ is charged with the responsibility of ordering an additional evidentiary hearing if the evidence "would likely change" the decision's outcome, provided that good cause exists for not submitting the evidence previously. Minn. Stat. § 268.105, subd. 2(c)(1).

Allman contends that the ULJ should have ordered a new evidentiary hearing because her medical documentation would have changed the outcome and because she had good cause for failing to submit it when she was informed only that the issue on appeal was "the [q]uit determination." In denying Allman's request for reconsideration, the ULJ did not specifically say that the outcome would remain unchanged even with the medical documentation, but discounted the medical evidence as failing to suggest a bona fide reason for Allman's actions. The ULJ then stated that Allman did not provide good cause for failing to submit the evidence and concluded, "It therefore will not be considered."

We evaluate a ULJ's denial of reconsideration and request for an additional evidentiary hearing under an abuse-of-discretion standard. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006); *see also Goodwin v. BPS Guard Servs., Inc.*, 524 N.W.2d. 28, 30 (Minn. App. 1994) (deferring to commissioner's discretion not to hold additional hearing). But the ULJ's discretion to deny an additional hearing is not absolute, and it must be exercised consistent with the statutory requirements.

Specifically, under Minn. Stat. § 268.105, subd. 2(c), the ULJ “must order an additional evidentiary hearing” if the conditions for considering new evidence are met. We therefore review the ULJ’s exercise of discretion in light of the statutory requirements.

The first question is whether Allman had good cause for not submitting her medical documentation at the initial hearing. The statute does not define good cause under subdivision 2(c) but provides guidance in parallel provisions. In subdivision 2(d), which addresses good cause for failing to participate in a hearing, the good-cause standard is met if a “reasonable person act[s] with due diligence.” Minn. Stat. § 268.105, subd. 2(d); *see also Skarhus*, 721 N.W.2d at 345 (discussing good cause under subdivision 2(d)). We conclude that the criteria of reasonableness and due diligence should likewise apply in evaluating Allman’s failure to present her medical evidence at the initial hearing.

Allman’s notice from DEED informed her that she was ineligible because she quit her employment. It cites Minn. Stat. § 268.095, subd. 1 (Supp. 2007), the subdivision that governs a voluntary resignation. The notice does not suggest that Allman left work without being legitimately ill, does not refer to employment misconduct, and does not cite the subdivision governing employment misconduct. *See id.*, subd. 6 (Supp. 2007) (defining employment misconduct). Allman received no indication that employment misconduct relating to her illness would be at issue in her appeal. On this limited notice, a reasonable person acting with due diligence would not have been fully prepared to provide evidence of her medical history at the hearing. Consequently, Allman had good

cause not to submit medical evidence directed to whether she was too ill to stay at work on October 16.

The second question that the ULJ must consider is whether the evidence would likely have changed the outcome of the decision. The ULJ did not specifically state that the outcome would have remained unchanged even with the medical documentation. Instead, the ULJ indicated that the medical documentation did not provide a “bona fide medical reason” for the final conduct leading to discharge, made his finding on the issue of good cause, and concluded that in the absence of good cause the medical documentation “will not be considered.” Because we have concluded that the record establishes good cause, the ULJ’s reliance on the absence of good cause is invalid. To the degree the ULJ’s determination expressed a conclusion that the medical documentation would not likely provide a basis for changing the ULJ’s decision, the conclusion does not appear to fully incorporate the statutory requirements for an additional evidentiary hearing.

The hearing was conducted on the issue of whether Allman had quit her job. Allman’s testimony consists almost entirely of several explanations of why she did not quit, concluding with her comments “I didn’t quit,” “I’m not quitting,” and “I never did quit.” Allman, who was unrepresented and who was the only witness, had no opportunity to address the issue of whether she committed employment misconduct by fabricating an excuse that she was ill. She also had no opportunity to exercise her option to subpoena witnesses or conduct discovery about the symptoms or extent of her medical condition.

*See* Minn. R. 3310.2914 (2007) (allowing parties opportunity to subpoena witnesses and conduct discovery).

The ULJ has an obligation to “assist unrepresented parties in the presentation of evidence” and “to ensure that relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2007). The ULJ acknowledged that the cause of Allman’s past medical absences “has not been clearly determined.” Thus, the basis for the ULJ’s finding that Allman “was not actually ill” on October 16 is not evident. The order does not directly discredit Allman’s testimony at the hearing or give reasons for rejecting her statements based on credibility. *See* Minn. Stat. § 268.105, subd. 1(c) (requiring ULJ to “set out the reason for crediting or discrediting” testimony of witness if credibility has significant effect on decision). Under these circumstances, Allman’s medical documentation would have provided evidence relevant to the decisive issue at the hearing.

Good cause and a likely effect on the outcome are established on this record. The ULJ’s discretion to deny reconsideration was not exercised within the requirements of the statute. We reverse and remand Allman’s case for a new evidentiary hearing on whether she committed employment misconduct.

**Reversed and remanded.**