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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0147**

Michael Hunter,
Relator,

vs.

Dolphin Staffing - Dolphin Clerical Group,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 12, 2013
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 29764386-4

Michael Hunter, Minneapolis, Minnesota (pro se relator)

Dolphin Staffing – Dolphin Clerical Group, Minneapolis, Minnesota (respondent)

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

Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment. We affirm.

FACTS

Relator Michael Hunter was employed by respondent Dolphin Staffing and assigned to an accounts-payable position with Donaldson Company beginning on January 9, 2012. On Friday, May 11, 2012, Dolphin contacted Hunter and informed him that the Donaldson assignment ended that day. The parties dispute whether Hunter requested a new assignment during this phone call. The ULJ found that he did not. The parties agree that on Thursday, May 17, 2012, Hunter contacted Dolphin and inquired about the availability of a new assignment. No assignment was available at that time.

Hunter applied for unemployment benefits and was determined to be eligible on the basis that he was laid off. Dolphin challenged that determination. On appeal, the ULJ determined that Hunter is ineligible for unemployment benefits because he quit employment under Minn. Stat. § 268.095, subds. 1, 2(d) (2012), when he failed to request a new assignment until more than five calendar days after the completion of his last assignment. On reconsideration, the ULJ affirmed the decision. This certiorari appeal follows.

DECISION

I.

We note at the outset an irregularity in how respondent Minnesota Department of Employment and Economic Development (DEED) processed Hunter's request for reconsideration of the ULJ's ineligibility determination. The ULJ's original decision was issued on July 30, 2012. The order affirming the decision states that Hunter filed his request for reconsideration on December 4, 2012. But a ULJ's decision is final unless a party files a request for reconsideration within 20 calendar days. Minn. Stat. § 268.105, subds. 1(c), 2(a) (2012). When a ULJ's decision becomes final, the department is deprived of jurisdiction to conduct further review. *Rowe v. Dep't of Emp't & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005). Because the identified date of Hunter's reconsideration request was beyond the statutory deadline, it appeared to this court that the ULJ lacked subject-matter jurisdiction at the time the decision was affirmed.

Accordingly, we ordered the parties to submit informal memoranda addressing the jurisdiction question. DEED responded that it had omitted from the record Hunter's reconsideration request dated August 4 and postmarked August 6, 2012. DEED offered no explanation for its failure to respond promptly to Hunter's timely request for reconsideration. Hunter responded that around November 30, 2012, DEED advised him to file a second reconsideration request because his original request was not in the file. Hunter did so on December 4, 2012, and the ULJ affirmed her decision on January 4, 2013. Hunter timely appealed to this court by writ of certiorari. Because Hunter's

original request for reconsideration was timely, the jurisdiction question is resolved and we proceed to the merits of the case.

II.

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2012). We view the ULJ's factual findings in the light most favorable to the decision. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to a ULJ's credibility determinations. *Id.* at 344.

An applicant who quits employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1. An applicant who, within five calendar days after completion of a job assignment from a staffing service, fails without good cause to request an additional assignment, is deemed to have quit employment. Minn. Stat. § 268.095, subd. 2(d).

The five-day period to request a new assignment applies only if, at the beginning of employment with the staffing service, the applicant "signed and was provided a copy of a separate document written in clear and concise language that informed the applicant of this paragraph and that unemployment benefits may be affected." *Id.* Hunter argues that the five-day period does not apply here because the disclosure provided by Dolphin was defective. The ULJ reviewed the disclosure and found it sufficient. We agree. Because Hunter received and signed, at the beginning of his employment with Dolphin, a

disclosure that conformed to the statutory requirements, we conclude that the five-day period to request a new job assignment applies.

The ULJ found that when Hunter's assignment ended on May 11, he did not request an additional assignment until May 17. In making this finding, the ULJ credited the testimony of Dolphin's staffing consultant over that of Hunter. When the credibility of a witness has a significant impact on the decision, the ULJ must "set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c). A credibility determination has a significant impact on the decision when the outcome rests on disputed testimony. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007). The ULJ's credibility determination here had a significant impact on the decision.

The ULJ noted that Dolphin's staffing consultant had been specifically trained to listen for an employee's request for additional work and carefully document any request in message reports. The ULJ credited the staffing consultant's testimony because it was consistent with the information contained in her message reports—that Hunter did not request a new assignment on May 11. We conclude that the ULJ satisfied the statutory obligation to set out the reasons for crediting testimony—the consultant's testimony was consistent with her contemporaneous notes, which she had been specifically trained to log. Thus, we will not disturb the findings.

Hunter also argues that his Thursday, May 17 request for an assignment was within "five calendar days" of Friday, May 11, because the period included an intervening weekend and a Sunday holiday (Mother's Day), during which no one was

available at Dolphin to take his call. But the statute does not exclude weekend days, and, as a practical matter, Hunter could have requested a new assignment on Monday, Tuesday, or Wednesday and been timely under the statute. Accordingly, the ULJ did not err by determining that Hunter quit when he did not request a new assignment within five calendar days of the completion of his last assignment.

Affirmed.