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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1616**

Ulanda D. Wiley,  
Relator,

vs.

Robert Half International, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed June 18, 2012  
Reversed and remanded  
Lansing, Judge\***

Department of Employment and Economic Development  
File No. 27879661-3

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Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and  
Lansing, Judge.

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

## UNPUBLISHED OPINION

LANSING, Judge

Ulanda Wiley challenges on two grounds an unemployment law judge's decision denying Wiley's eligibility for unemployment benefits. First, she contends that the record fails to support a determination that she quit without a good reason attributable to her employer, and, second, she asserts that because her part-time temporary position was unsuitable employment, her previous eligibility for unemployment benefits is preserved under Minn. Stat. § 268.035, subd. 23a(g)(4) (2010). Although we reject her first ground, we agree that Wiley was not allowed an opportunity to present and develop the evidence of unsuitability of her employment as an alternative basis for eligibility. We reverse and remand for consideration and resolution of that issue.

### FACTS

Following a lay-off from permanent employment and an inability to find replacement full-time employment, Ulanda Wiley accepted a temporary part-time position with Robert Half International's temporary staffing agency. Wiley was assigned to work as a medical biller at Handi Medical Supply and worked a minimum of 30 hours a week, with payment on a weekly basis at the rate of \$14 an hour. She worked from May 3, 2011, until May 27, 2011, and quit, according to Wiley, because she "wasn't getting paid on time" and "was very uncomfortable in the situation." Half International reported that Wiley "quit due to job dissatisfaction."

The Department of Employment and Economic Development (DEED) rejected Wiley's request for unemployment benefits, noting that "[t]he applicant quit . . . because

of poor or unpleasant working conditions. The evidence does not show that the working conditions would have caused an average, reasonable worker to quit.” Wiley appealed the denial of benefits and an unemployment law judge conducted an evidentiary hearing.

Wiley testified that it was crucial that she receive a weekly paycheck because she was obligated to make weekly payments to her landlord, Xcel Energy, and other creditors. These payments had been set up after Wiley encountered difficulties balancing the financial demands facing a single parent of three young children—two with special medical needs—during a period of unemployment.

Half International agreed to pay her on a weekly basis, but Wiley elected to receive her paychecks through direct deposit, and the lag time to set it up resulted in her not receiving a paycheck for the week of May 1 until May 17, and the paycheck failed to include her first day of work. Wiley worked the week of May 8 and received a paycheck for that pay period by a timely direct deposit on May 16. She also received timely payment by direct deposit for the next two work weeks that she completed. But she did not receive the \$98 payment for her first day of work—May 3—until June 1.

Wiley testified that obtaining that payment took more than five requests to her supervisor and a direct request to the payroll division. She also said that customer service at Half International explained that in order to obtain the missing payment, her supervisor had to initial the left side of the timecard with no other notations. Because her supervisor continued to write notes on that side of her timecard, her payment was delayed. Wiley said that because Half International had not paid her on time from the first week, she

decided that she had to find a different way to meet her obligations and that was why she quit.

Half International introduced evidence of an e-mail that Wiley sent to her supervisor that said she was frustrated by not receiving her first paycheck on time and by the fact that she had to pay a deductible for her and her children's healthcare that she did not have to pay when she had been unemployed.

The unemployment law judge concluded that Half International had corrected the payment error and that this was not a cause of employment termination attributable to the employer because it would not compel an average, reasonable worker to quit. The unemployment law judge also concluded that Wiley quit so that she would be eligible to enroll in state and county programs to assist her financially, not because of her problems with her paychecks. Wiley filed a request for reconsideration, and the unemployment law judge affirmed. This certiorari appeal follows.

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

When reviewing the decision of an unemployment law judge, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if substantial rights have been prejudiced because the findings, inferences, conclusions, or decision are affected by error of law or unsupported by substantial evidence, taking into account the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2010). We view factual findings in the light most favorable to the decision and defer to the unemployment law judge on credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We address each of Wiley's issues in turn.

## I

First, Wiley contends that she had good reason to quit her job at Half International because she was not paid on time. An applicant who voluntarily terminates employment is ineligible for unemployment unless the applicant had “a good reason caused by the employer” to quit. Minn. Stat. § 268.095, subd. 1(1) (2010). A “good reason” to quit is a reason: “(1) that is directly related to the employment and for which the employer is responsible; (2) that is adverse to the worker; and (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” Minn. Stat. § 268.095, subd. 3(a) (2010). If an applicant was subjected to adverse working conditions, the applicant must inform the employer and give the employer a reasonable opportunity to correct the problem before it can be considered a good reason to quit. Minn. Stat. § 268.095, subd. 3(c) (2010). When the facts are undisputed, the determination that an employee quit without a good reason that is attributable to the employer is a question of law, which we review *de novo*. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

We conclude that the record adequately supports the unemployment law judge’s decision that the delay caused by the direct deposit procedure and the further delay in paying Wiley the \$98 for her first day of work were not sufficiently adverse to compel an average, reasonable worker to quit. Allowing for the delay caused by the direct-deposit option, Wiley should have been paid the \$98 from her first day of work on May 17, which is the date that she received the rest of her paycheck for that work period. Although her supervisor’s repeated time-card notations prevented payment and does not

provide a positive model for efficient response, Half International was generally responsive to Wiley's inquiries and worked with her to have her supervisor at Handi Medical submit the correct paperwork. The payment correction was made on June 1, two weeks after the initial problem was discovered. The unemployment law judge reasonably concluded that the two-week delay was not so long as to compel an average, reasonable worker to quit employment.

## II

Wiley's second issue relies on specific statutory provisions that create exceptions to ineligibility when the worker separates from unsuitable employment. This "unsuitable employment" exception 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 were most recently separated was full time. *Cf. Valenty v. Med. Concepts Dev., Inc.*, 503 N.W.2d 131, 135 (Minn. 1993) (recognizing that allowing trial period in unsuitable job allows unemployed person to determine whether job is acceptable without fear of losing current unemployment benefits).

Specifically, Wiley claims eligibility under Minn. Stat. § 268.035, subd. 23a(g)(4).

The statute provides a general definition that relates to the applicant's qualifications:

Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications. In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence is considered.

Minn. Stat. § 268.035, subd. 23a(a) (2010). The statute further provides that employment is not considered suitable if “the employment 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.”<sup>1</sup> *Id.*, subd. 23a(g)(4). To be eligible for benefits when the intervening employment was unsuitable, the applicant must quit within 30 days of beginning employment. Minn. Stat. § 268.095, subd. 1(3) (2010).

As explained at oral argument, DEED does not dispute that Wiley terminated her employment with a staffing service within 30 days of beginning employment or that her wage credits come within the exception because none of the credits were from a job assignment with a client of a staffing service. Instead, DEED contends that, in addition to meeting the requirements of Minn. Stat. § 268.035, subd. 23a(g)(4), section 268.095, subd. 1(3), requires that Wiley must also establish that the specific reason she quit was because the job was not suitable. DEED argues that section 268.095, subdivision 1(3), precludes Wiley from asserting on appeal that her job was unsuitable because during the evidentiary hearing before the unemployment law judge she only asserted that she was not being paid on time.

We can 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. DEED

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<sup>1</sup> Wiley cites to the 2011 supplement, which provides that employment is not suitable if less than 25 percent of the wage credits are from a staffing service. Absent exceptions that do not apply here and unless otherwise specified in the act, the effective date of a legislative enactment is August 1. Minn. Stat. § 645.02 (2010). Because Wiley was determined to be ineligible for unemployment benefits on July 1, 2011, the claim is governed by the 2010 statute.

has not provided any authority for its argument. We recognize that DEED has not had a full opportunity to brief this issue because it was not addressed at the evidentiary hearing and the unemployment law judge did not make findings on the suitability of Wiley's employment with Handi Medical or the applicability of the unsuitability exception provided in Minn. Stat. § 268.035, subd. 23a(g)(4). But a remand to properly develop the record would provide DEED that opportunity.

Finally, we address DEED's argument that Wiley did not raise the issue of employment suitability and that the unemployment law judge's responsibility to develop the record does not require an inquiry into every exception when there is no evidence to support its applicability, even if the claimant is unrepresented at the hearing—as Wiley was in this case. We agree that the unemployment law judge is not required to become the unrepresented party's advocate. *See Stassen v. Lone Mountain Truck Leasing, LLC*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2012 WL 686098, at \*5 (Minn. App. Mar. 5, 2012). But the unemployment law judge should assist unrepresented parties in presenting evidence. Minn.R. 3310.2921 (2011). In addition, the record demonstrates that there was evidence that directly raised the suitability of Wiley's employment and the applicability of section 268.035, subdivision 23a(g)(4). Wiley's employment record demonstrates that she was previously separated from a permanent position. She testified to that fact, and she also testified that she was assigned a temporary position and that she left that position before thirty days elapsed. Wiley also attempted to admit into evidence a second packet of information that was not admitted because Half International did not receive it in advance of the hearing. At oral argument, Wiley indicated that the packet included information

that detailed her previous wage credits. Under these circumstances, we conclude that Wiley was not allowed to present relevant evidence and was not adequately assisted in the development of relevant facts as required by Minn. Stat. § 268.105, subdivision 1(b) (2010), and Minn. R. 3310.2921.

Consequently, we reverse and remand to allow the development of all relevant facts and a determination of whether Wiley meets the exception to ineligibility under section 268.035, subdivision 23a(g)(4). DEED may also present any arguments that weigh against the applicability of the statutory provision as it is written.

**Reversed and remanded.**