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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1824**

Lynn R. Anderson,
Relator,

vs.

Amanzi Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 7, 2009
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 21072673-3

Lynn R. Anderson, 6 Lee Street, Forest Lake, MN 55025 (pro se relator)

Amanzi Corporation, P.O. Box 69, Stacy, MN 55079-0069 (respondent)

Lee B. Nelson, Katrina L. Gulstad, Minnesota Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for respondent-department)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge that she is ineligible for unemployment insurance benefits because she quit her employment for medical reasons without informing her employer of her condition or requesting accommodations from her employer. We affirm.

FACTS

Relator Lynn R. Anderson was employed by respondent Amanzi Corporation from January 15, 2008 until July 18, 2008. During her employment, it was relator's job to sit at a table and operate a machine with her arms while using a foot pedal under her left foot. Relator developed pain in her back and sciatic nerve problems, which relator tried to remedy by adjusting her chair and placing a box under the foot not operating the machine's foot pedal. Relator testified that when she and a coworker attempted to adjust the chair lower, she discovered it was as low as it could go. Relator stated that her supervisor witnessed her efforts to change the height of her chair, but did not offer to help, nor did relator request any accommodations related to her workstation.

On May 22, 2008, relator brought her employer a letter from her doctor stating that "[d]ue to medical issues, [relator] will need to be off work for one week." The letter did not specify what such medical issues were, or what caused them. Employer allowed relator a week off. On May 30, relator brought her employer another letter from her doctor stating, "[d]ue to back issues, [relator] will need to be off work until 6/6/08 and then work half days for 1 week then back to full work capacity." Again, the letter did not

identify the cause of the back issues. The employer approved the changes to relator's work schedule and approved a second week of half days following the week requested in the letter. On July 18, relator brought her employer another letter from her doctor stating, "[d]ue to a flare of her chronic discogenic back pain, [relator] needs to terminate her employment at your facility." Relator terminated her employment that day.

The Department of Employment and Economic Development determined that relator was ineligible for unemployment insurance benefits, finding that relator quit her employment. Relator appealed this decision to an unemployment-law judge (ULJ), and a hearing was held. Following the hearing, the ULJ determined that relator was ineligible for unemployment benefits because she failed to request that her employer make accommodations for her medical condition. In response to relator's request for reconsideration, the ULJ corrected certain findings of fact, but affirmed the decision that relator was ineligible for unemployment benefits. This certiorari appeal follows.

D E C I S I O N

Relator argues that (1) there were several problems with the testimony of the employer's witness during the hearing, including that he gave false testimony, (2) a necessary witness was not called to testify, (3) she was not allowed to fully explain issues during the hearing, and (4) her doctor's notes provided her employer with notice that accommodations needed to be made in her working conditions.

The standard of review is set forth in Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

An appellate court will review factual determinations in the light most favorable to the decision. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996). “Whether an employee voluntarily quit is a question of fact for the [decisionmaker].” *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). There is no dispute here that relator quit her employment.

An employee who voluntarily quits employment is ineligible to receive unemployment benefits unless the employee quit the employment for one of a specific set of reasons, including “because the [employee’s] serious illness or injury made it medically necessary that the [employee] quit, provided that the [employee] inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made available.” Minn. Stat. § 268.095, subd. 1(7) (Supp. 2007).

The ULJ determined that relator’s argument that her supervisor knew she was having back problems and that relator wanted to change her position to ease her back pain was not the same as asking for an accommodation and having that request denied.

The ULJ determined that relator did not ask her supervisor or any other member of employer's management for a change in her work position. Relator testified that she had informed her supervisor that she was having back problems related to sitting and that it was nice getting up to test parts because she didn't have to sit. Relator admitted that she never told a member of management that she could not sit and do her job or asked if there was another job she could do. Relator testified that she mentioned that she liked testing parts, but that testing wasn't a daily duty and most of the jobs seemed to involve sitting. Relator also admitted that she did not know if there was another job in the shop that she could have done instead of her assigned job and that she never asked whether elevating her workstation was an option. At the conclusion of her direct testimony, the following colloquy occurred between the ULJ and relator:

ULJ: Okay. Did you think about going to [management] and telling them, look, I'm having trouble doing my job because of my back pain, is there anything you can do to help me out?

RELATOR: No I didn't, but I just knew they all knew and nobody offered. I mean I feel if you're doing your job and you're doing a good job that somebody may do something to keep you there.

Relator argued that her doctor's notes should have sufficed as formal requests for accommodations because they put the employer on notice that relator was having back problems. Relator admitted that all accommodations she asked for with regard to time off, reduced scheduling, and making time for therapy sessions were granted. Relator acknowledged that her doctor's notes did not state that her back problems were the result

of her work. Relator acknowledged that she never made a formal request for any accommodation because she “wouldn’t even have thought of that.”

Relator insists her employer knew or should have known she was having back problems, that those problems were related to her work, and that the employer should have asked her if she needed any accommodations. The record supports the ULJ’s determination that the serious-illness exception does not apply in this case. The record does not demonstrate that any accommodations requested by relator were not made available by the employer.

Madsen v. Adam Corp., 647 N.W.2d 35 (Minn. App. 2002), provides a good comparison to this case. In *Madsen*, this court reversed a ULJ’s determination that the serious-illness exception did not apply where the employee met with the employer and informed the employer that she intended to quit her employment because of an impending operation to correct a problem that the standing required by her job exacerbated. *Id.* at 36, 38-39. During that meeting, the employee and employer discussed that there were no suitable jobs available with the company that would allow the employee to sit, thereby alleviating her problem. *Id.* at 36. This court found that the employee had made reasonable efforts to remain in her employment during the meeting with her employer. *Id.* at 37. The situation here is distinguishable from that in *Madsen*. Here, relator admits she made no formal requests for accommodation. The record establishes that the employer knew relator was experiencing back problems, but the doctor’s notes do not establish relator’s employment as the cause for such problems; only

relator's testimony, which the ULJ did not find to be persuasive, supported her position that someone at the shop knew that relator's work was the cause of the pain.

Relator raises several other issues regarding the hearing. Relator first argues that the ULJ did not allow her to fully explain some issues in the hearing. The transcript does not support this argument. Relator was allowed an opportunity to present her own testimony, to cross-examine the employer's witness, to rebut the employer's witness's testimony, and to make a closing statement. Following her closing statement, the ULJ asked relator if she had anything else to say. Relator responded, "No, not that I can think of." Relator offers no examples of issues she was not allowed to fully explain, and the record does not support her argument that the ULJ did not allow her to offer such an explanation.

Relator also raises an issue related to who testified on behalf of the employer, arguing that the witness who did testify had no first-hand knowledge of the situation, and that the supervisor who did have knowledge of the situation was not allowed to testify. Relator did not raise this argument during the hearing, nor does the record indicate any request by relator that the supervisor be called to testify. Generally, this court will not consider issues not argued and considered in the court below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). As no request for the supervisor's testimony was made, there is nothing properly before this court for review.

Relator argues that the employer's witness lied in his testimony. The ULJ found the witness's testimony to be more persuasive than relator's. This court defers to the

ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The record, viewed in the light most favorable to the decision, provides substantial evidence to support the district court's findings that relator did not request any accommodations from her employer relating to her back problems that were denied by the employer. Accordingly, the serious-illness exception is not applicable in this case. The ULJ properly determined that relator was ineligible for unemployment benefits.

Affirmed.