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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-212**

Alyona Salo, n/k/a Alyona Salo-Severson,
Relator,

vs.

International Health Care Services (Corp),
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 14, 2010
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
Agency File No. 23937349

Alyona Salo-Severson, Ramsey, Minnesota (pro se relator)

International Health Care Services, Golden Valley, Minnesota (respondent employer)

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

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this certiorari appeal, relator challenges the decision of an unemployment-law judge (ULJ) that she is ineligible for benefits because she is on a voluntary leave of absence. Relator agrees that she is on a voluntary leave of absence, but argues that she is entitled to benefits because she did not quit. We affirm.

FACTS

Respondent International Health Care Services (IHCS) employed relator Alyona Salo-Severson as a personal care assistant (PCA) starting in September 2007. According to Michael Tobak, an IHCS representative, the Minnesota Department of Human Services (DHS) requires all PCAs to have a provider identification number. *See also* Minn. Stat. § 256B.0659, subd. 11(a)(3) (Supp. 2009) (requiring PCAs to enroll with DHS). When IHCS hires a new PCA, it applies for an identification number for the new employee, which involves a background check, before allowing the new PCA to work. IHCS also requires new employees to be tested for tuberculosis. IHCS suggests a clinic where the test can be administered and reimburses employees up to \$50.

Relator's only client was her mother. Relator took a leave of absence from IHCS in June 2009. On November 9, relator told IHCS that she was ready to return to work, but her DHS provider identification number had become inactive, necessitating that relator reactivate the number before returning to work. Additionally, relator needed to submit an information-change form to DHS because she had changed her name since her initial enrollment with DHS. According to relator, IHCS told her that before returning to

work, she also would need to wait for a new background check, which could take as long as two months, and would need to submit to another tuberculosis test. Relator refused to fulfill the requirements to return to work, claiming that they were unnecessary.

According to Tobak, IHCS would willingly have relator back as a PCA for her mother because her mother would not accept services from any other PCA, so that job was available. Tobak also stated that relator's chest x-ray from September 2007 was "still valid," and relator would only have to complete a questionnaire before returning to work to verify that she was not experiencing any tuberculosis symptoms. Tobak testified that even if DHS conducted a new background check, it would be completed in approximately 10 days, and DHS could authorize PCAs to work in the interim.

Instead of returning to work, relator applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development determined relator to be ineligible for benefits on the ground that she was on a voluntary leave of absence. Relator appealed, and a ULJ conducted a hearing. Relator argued that she was eligible for benefits because: IHCS was illegally requiring her to pay for her own tuberculosis testing; she should not be required to submit to a second background check; and she was actually laid off for lack of work. The ULJ found that IHCS did not require relator to get a new tuberculosis test at her own expense before allowing her to return to work and determined that relator was ineligible for benefits because she was on a voluntary leave of absence and could return to work as soon as she completed the paperwork requested by IHCS. Relator requested reconsideration, and the ULJ affirmed his decision. This certiorari appeal follows.

DECISION

Relator argues that she is eligible for benefits because: (1) she did not quit but, rather, was on a leave of absence; (2) she has not returned to work because IHCS was illegally requiring her to have a tuberculosis test at her own expense; (3) she has not returned to work because IHCS told her that she may have to submit to a new background study, which she does not believe is necessary; and (4) IHCS negligently allowed her enrollment with DHS to lapse without informing her.

This court may remand, reverse, or modify the decision of a ULJ if the substantial rights of the litigant may have been prejudiced because the findings, conclusion, or decision are affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). This court views the ULJ's findings in the light most favorable to the decision, gives deference to the ULJ's credibility determinations, and will not disturb the ULJ's factual findings when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator argues that she is entitled to benefits because she did not quit and is simply on a leave of absence. The ULJ agreed that relator is on a leave of absence and did not quit. But relator's being on a leave of absence does not necessarily entitle her to benefits: "An applicant on a *voluntary* leave of absence is ineligible for unemployment benefits for the duration of the leave of absence," while "[a]n applicant on an *involuntary* leave of absence is not ineligible under this subdivision." Minn. Stat. § 268.085, subd. 13a(a) (2008) (emphasis added). "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.*

Relator's leave of absence is voluntary. Relator's position with IHCS was available—her only PCA client was available and would only accept PCA services from her. IHCS was eager to have relator return to work to provide PCA services to her mother, but relator refused to complete the paperwork necessary to return to work, claiming that IHCS was illegally requiring her to submit to an additional tuberculosis test at her own expense, that IHCS wrongly told her she might need another background check, and that IHCS negligently allowed her enrollment with DHS to lapse.

But, based on Tobak's testimony, the ULJ found that "[a] preponderance of the evidence establishes work [relator] can perform is available with IHCS, but that [relator], in effect, chooses not to work. . . . As soon as [relator] completes necessary paperwork, she will be able to return to work in short order." The ULJ also expressly found that IHCS was not requiring relator to pay for a tuberculosis test. The ULJ explained:

To the extent [relator] claims Tobak created multiple unnecessary or improper hurdles to her return, her testimony is not as credible as Tobak's. IHCS has no financial motive in preventing her return to work. Further, [relator's] testimony and written submissions were inconsistent, illogical, and essentially amounted to a moving target. For example, [relator] wrote in her appeal statement, "I was ready to come back in July he couldn't provide me with any clients." [Relator's] mother was [relator's] only client and did not have another PCA working for her.

Substantial evidence in the record supports the ULJ's findings that relator's leave of absence is voluntary, and that relator therefore is ineligible for unemployment benefits.

Affirmed.