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

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1383

David Wisniewski,
Relator,

vs.

Instant Web, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 9, 2011
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 24824347-3

David W. Wisniewski, Chanhassen, Minnesota (pro se relator)

Instant Web, Inc., Chanhassen, Minnesota (respondent)

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

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this certiorari appeal, relator challenges the decision by an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that he is eligible for benefits because quitting his employment was medically necessary. We affirm.

FACTS

Relator David Wisniewski was employed as a maintenance mechanic for respondent Instant Web, Inc., (respondent) from January 15, 2007, through March 10, 2010. As a maintenance mechanic, relator "was responsible for maintaining and repairing printing equipment, envelope making equipment, and bindery equipment." When hired, relator made the employer aware that he was a disabled veteran with an 80% disability rating, but he did not request any accommodations for his disability.

In December 2009, relator sprained his hand and broke one of his fingers when he lost control of an electric drill that he was operating at work. Relator attributed the incident to a loss of strength, but he did not speak with any doctors about whether it was safe for him to continue his employment following the incident. In January 2010, relator was diagnosed with carpal tunnel syndrome and was given a 100% disability rating.[1] Relator was also diagnosed with plantar fasciitis, which was aggravated by walking on concrete floors. Relator had previously been told by doctors that a change in

[1] Relator testified that a 100% disability rating does not mean that he is not able to work at all.

employment would lessen his symptoms, but he was never told that it was medically necessary to quit his job as a maintenance mechanic.

On March 1, 2010, relator decided that he was in too much pain from standing and walking to continue working. Relator submitted a letter of resignation stating:

> It is with great sorrow and trepidation that I write this letter of resignation, but recent developments leave me few other options. When I started with this company, three years ago, I informed you that I was an 80% disabled veteran. On January 5th, 2010 I was assigned 100% disability status due to severe carpal tunnel syndrome and chiropathy of both shoulder joints.
>
> I feel these conditions directly caused the industrial accident in which I was involved at the end of December. I also feel that my physical condition is responsible for the 75% rating which I received on my last review. At other companies my workmanship and efficiency was scrutinized by top professionals and I never received anything other than superior performance reviews.
>
> If there [are] any other assignments that I may fill for this organization I would be happy to do so, however my only talents are management and engineering.
>
> Therefore as of March 15th, 2010 I will be vacating my position and seeking employment that suits my physical condition.

Relator's supervisor promptly responded and urged relator to reconsider his decision. On March 2, relator sent a second letter to his supervisor thanking him for his concern and affirming his decision to resign. In the second letter, relator expressed his intention "to find work that will allow [him] shorter hours and less walking, standing and lifting."

Relator filed a claim for unemployment benefits with respondent Minnesota Department of Employment and Economic Development. A department adjudicator determined that relator was ineligible for unemployment benefits because he quit his employment and did not meet the requirements of an exception from ineligibility that applies when quitting is medically necessary. Relator appealed to a ULJ. Following an evidentiary hearing, the ULJ determined:

> [Relator] claimed his medical condition caused him to quit his employment with [respondent]. [Relator] said his reason for quitting was it became too painful to stand, walk and perform his job duties. [Relator] testified doctors told him changing jobs would lessen his symptoms, but no physician told him it was medically necessary to quit. The evidence presented by [relator] fails to establish this element of the exception. And even if it was medically necessary for [relator] to quit, he did not inform [respondent] of his medical problem and request an accommodation.

The ULJ concluded that relator was ineligible for unemployment benefits. Relator filed a request for reconsideration, and the ULJ affirmed the decision. This certiorari appeal followed.

D E C I S I O N

This court may affirm the ULJ's decision, remand the case for further proceedings, or reverse or modify the decision if the relator's substantial rights 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." Minn. Stat. § 268.105, subd. 7(d) (2008).

This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's factual findings will not be disturbed when they are supported by substantial evidence. *Id.* Whether an employee is disqualified from receiving unemployment benefits is a question of law, which this court reviews de novo. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010); *see also* Peppi *v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000) (stating that whether employee had good reason to quit is legal question subject to de novo review).

It is undisputed that relator quit his employment. A person who quits employment is not eligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). One exception applies if

> the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit . . . . This exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.

Id., subd. 1(7)(i). The ULJ determined that this exception does not apply because the evidence that relator presented did not establish that it was medically necessary for him to quit his employment.

Relator argues that because Minn. Stat. § 268.095, subd. 1(7)(i), does not require a doctor's opinion, the ULJ erroneously concluded that the medical-necessity exception does not apply to him. But under the plain language of the statute, the medical-necessity exception applies only when it is "medically necessary that the applicant quit." *Id.* Consequently, an applicant who quit employment will be eligible to receive benefits under the exception only if substantial evidence shows that quitting was medically necessary.

There is no evidence in the record that relator was advised by any doctor or other health-care professional that it was medically necessary for him to quit. Although relator testified that he had been told by doctors that a change in employment would lessen his back and neck symptoms, he did not testify that he had been told that it was medically necessary to quit his job. Significantly, relator acknowledged at the hearing before the ULJ that, between the incident in December 2009 and his resignation in March 2010, he had not spoken with any doctors about continuing his employment. Instead, relator testified that he quit his employment because it hurt too badly to stand and walk and he was in too much pain. Although we are sympathetic about the pain that relator experienced at work, we agree with the ULJ that relator's assessment of his medical condition is not substantial evidence that quitting his employment was medically necessary. Because the record does not demonstrate that relator's quit was medically necessary, the ULJ did not err in determining that relator is ineligible to receive unemployment benefits.

Relator also challenges the ULJ's determination that "he did not inform [respondent] of his medical problem and request an accommodation." Because we conclude that relator did not show that it was medically necessary for him to quit, we need not address relator's additional arguments.

Affirmed.