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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-412**

John Kaschins,
Relator,

vs.

Minnesota State Public Defense Board,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed December 12, 2011
Remanded
Klaphake, Judge**

Department of Employment and Economic Development
File No. 25836187-3

John Kaschins, Decorah, Iowa (pro se relator)

Minnesota State Public Defense Board, Minneapolis, Minnesota (respondent)

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

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator John Kaschins, who was employed by Olmstead County as an assistant public defender from 2007 to 2010, challenges a decision by the unemployment law judge (ULJ) that a statutory exception for those who agree to temporary unemployment to prevent the layoff of a coworker under Minn. Stat. § 268.088 (2010), did not apply to his decision to accept a voluntary “salary savings leave,” and that he was therefore not eligible to receive unemployment benefits. Because the ULJ failed to consider language of this section, which states that the ineligibility provisions of Minn. Stat. § 268.085, subd. 13a (2010) do not apply when a voluntary leave is granted due to lack of work, and because the ULJ failed to set forth reasons for implicit credibility determinations on testimony that had a significant effect on that decision, we remand for further proceedings.

DECISION

This court may reverse, remand, or modify a ULJ decision in an unemployment matter if, among other reasons, the decision is unsupported by substantial evidence, affected by an error of law, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). This court reviews questions of law de novo but will not disturb findings of fact unless they are unsupported by substantial evidence. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2011); *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). Construing the statutes governing eligibility for unemployment benefits is a question of law subject to de novo review. *Lolling v. Midwest Patrol*, 545

N.W.2d 372, 375 (Minn. 1996); *Bakkuri v. Dept. of Emp't & Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007).

A worker who voluntarily takes a leave of absence is “ineligible for unemployment benefits for the duration of the leave of absence.” Minn. Stat. § 268.085, subd. 13a(a). However, a worker who takes a voluntary leave is entitled to benefits if the worker is laid off under the following circumstances:

An applicant who elects to become temporarily unemployed in order to avoid the layoff of another employee with the applicant’s employer *due to lack of work* is not ineligible for benefits under the leave of absence provisions of section 268.085, subd 13a, nor ineligible under the quit provisions of section 268.095, if:

- (1) the election is authorized under a collective bargaining agreement or written employer policy;
- (2) the employer has accepted the applicant’s election;
- (3) the employer provides a written certification that is provided to the department that the applicant’s election prevented another employee with the employer from being laid off *due to lack of work*; and
- (4) both the applicant and the employer, at the time of the election, expect the applicant’s unemployment from the employer to be temporary.

Minn. Stat. § 268.088(a) (emphasis added). The worker must also meet all other eligibility requirements. Minn. Stat. § 268.088(b). This statute was enacted in 2009, and it has not been interpreted by an appellate court of this state to date. 2009 Minn. Laws ch. 78, art. 3, § 10.

In deciding this case in favor of the employer, the ULJ concluded that relator was not entitled to receive the benefits provided for in Minn. Stat. § 268.088(a), even though he may have otherwise been entitled to receive them, because his leave was granted as part of a disciplinary action and therefore did not constitute a voluntary salary savings leave. This decision did not adequately analyze the operative language of the statute, however, and it was premised on findings that depended in part on implicit credibility determinations.

We first address the application of Minn. Stat. § 268.088(a). This statute applies when the employee chooses to take a voluntary leave to prevent “the layoff of another employee . . . *due to lack of work*[.]” *Id.* (emphasis added). In addition, one of the four conditions that must exist in order for the statute to apply is that the employer must provide written certification “that the applicant’s election prevented another employee with the employer from being laid off *due to lack of work*.” *Id.* at (a)(3) (emphasis added). Thus, the statute requires the employee’s voluntary leave to be occasioned by lack of work in order for the statute to apply. However, no evidence was introduced into the record on whether relator’s layoff was due to lack of work, and neither the parties nor the ULJ addressed the ramifications of this language on appellant’s claim for benefits. Because the record is incomplete, we must remand for development of the record, for the ULJ to hear testimony from the parties on this issue, and for the ULJ to rule on it. *See* Minn. Stat. § 268.105, subd. 1(b) (2010) (stating that ULJ “must ensure that relevant facts are clearly and fully developed”); Minn. R. 3310.2921 (2009) (same); *see also Vassei v. Schmitt & Sons Sch. Buses, Inc.*, 793 N.W.2d 747, 751 (Minn. App. 2010

(noting that remand is necessitated when ULJ failed “to assist unrepresented parties when it constituted a significant procedural defect”).

Second, relator testified at the hearing before the ULJ that during his grievance negotiations he was motivated to take a one-year salary savings leave offered by his employer because of “my colleagues being laid off and [I] wanted to avoid that possibility as much as possible, so as part of the settlement I agreed to participate in the salary savings leave program.” The employer’s chief administrator, Kevin Kajer, was also at the grievance negotiation that resulted in relator being granted the salary savings leave, and at the hearing before the ULJ, Kajer denied that relator’s grant of leave was to avoid another employee’s layoff. The ULJ’s decision does not address relator’s testimony, although its decision shows that it implicitly rejected it. “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2010). Because the documentary evidence could have supported a decision in favor of either party and because the testimony of witnesses on behalf of each was contradictory, we conclude that the ULJ erred by failing to make credibility determinations regarding that testimony. For this reason as well, we remand this case for further findings. *See Wichmann v. Travalia & U.S. Directives*, 729 N.W.2d 23, 29 (Minn. App. 2007) (requiring remand for credibility findings when ULJ failed to make findings required by unemployment statute and credibility was central to the unemployment decision).

Upon remand, the ULJ shall hold an additional evidentiary hearing pursuant to this decision.

Remanded.