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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1846**

Nurieni Abdi,
Relator,

vs.

Atterro, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed August 7, 2017
Affirmed
Reyes, Judge**

Department of Employment and Economic Development
File No. 34794492-3

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Atterro, Inc., c/o TALX UCM Services, Inc., St. Louis, Missouri (for respondent employer)

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Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he neither informed respondent-employer of an injury nor requested accommodation prior to quitting. We affirm.

FACTS

Respondent-employer Attero Inc. is a staffing service doing business as Pro Staff. Pro Staff assigned relator Nurieni Abdi to a full-time position as a forklift operator with client-company Universal.

On July 1, 2016, relator quit his employment with Pro Staff due to knee pain from driving a forklift. Relator applied for unemployment benefits, and respondent Department of Employment and Economic Development (DEED) determined that he was ineligible because relator did not follow the proper procedure to quit for medical reasons. Relator appealed DEED's determination, and the ULJ held a telephonic evidentiary hearing.

The hearing was interpreted in Somali for relator, and relator was represented by an attorney. Neither relator nor his attorney planned to call any witnesses. Relator testified that, nine or ten days before he quit, he spoke with two managers and a supervisor at Universal (the Universal employees) to request that he be assigned a different job that would cause him less pain. The Universal employees told relator that they did not have any other positions for relator and that he should contact Pro Staff regarding his pain and his request for a different assignment.

Relator testified that he first reported his knee pain to Pro Staff when he called on July 1 and spoke with a woman whose name he could not recall. Relator noted that he “was also having a language barrier” and did not know how well the Pro Staff employee understood him. Relator testified that he told the Pro Staff employee that he could not finish his shift due to his knee pain and requested a different position. In response, the employee told him “to stay there for one more week” and that, if he could not finish the shift, Pro Staff “would not be able to find [relator] another assignment.”

Relator further testified that he did not visit a doctor for his knee pain until after he quit because his shift ended at 2:00 a.m., and he did not have time to go to the doctor at other hours.¹ When relator visited a doctor after quitting the assignment, the doctor imposed work restrictions on relator.

Anhngyet Nguyen, a Pro Staff talent manager, testified at the hearing on behalf of Pro Staff. Nguyen testified that relator called Pro Staff on July 1 and spoke with Erin Koolen. Relator told Koolen that he was quitting, but Koolen could not get any additional information from relator about his decision to quit or a one-week formal notice before relator ended his employment.

At the conclusion of the hearing, Nguyen emailed to the ULJ and relator’s attorney Koolen’s documentation of the email Koolen sent Universal after the July 1 conversation (the conversation) with relator:

We just heard from Nurieni Abdi, and unfortunately, he is leaving the position right now and is not returning. I tried to

¹ Relator did not provide further explanation as to why he did not visit a doctor prior to quitting.

get some additional information from him regarding the reason, but he was not willing to provide me with additional details or a notice. He is aware that Pro Staff will not be a resource for him moving forward, and we apologize for this inconvenience. We will get working on a replacement for him right away.

When the ULJ asked if Koolen was available to testify, Nguyen stated that Koolen was unavailable because she was “out on the field working.”

After the hearing, the ULJ issued her findings of fact and decision, confirming relator’s ineligibility for unemployment benefits because it was “more likely than not, that [relator] did not inform Pro Staff of his knee problems or request an accommodation before he quit.” Relator requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal follows.

D E C I S I O N

When this court reviews a ULJ’s determination of ineligibility for unemployment benefits, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if a relator’s substantial rights have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2016). A relator’s substantial rights may have been prejudiced where “the findings, inferences, conclusion, or decision are . . . made upon unlawful procedure . . . [or] unsupported by substantial evidence in view of the entire record.” *Id.* We review de novo whether a ULJ properly determined that a relator was ineligible to receive unemployment benefits. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). This court views a ULJ’s factual findings in the light most favorable to the decision, and we will not disturb the factual

findings when they are substantially sustained by the evidence. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

An applicant who quits their employment is not eligible for unemployment benefits unless they satisfy a statutory exception to ineligibility. Minn. Stat. § 268.095, subd. 1 (2016). One exception occurs when a serious illness or injury made it medically necessary to quit. *Id.*, subd. 1(7). This exception applies only if the applicant informed the employer of the medical problem, requested accommodation, and no accommodation was made available. *Id.*

Relator does not dispute that he quit his employment with Pro Staff but asserts that his medical condition made it necessary to quit. Relator argues that the ULJ's credibility determinations are not supported by substantial evidence and that the ULJ followed unlawful procedures by failing to fully develop the record. We address each argument in turn.

I. The ULJ's credibility determinations are supported by substantial evidence in the record.

Relator concedes on appeal that he spoke with Koolen when he called Pro Staff, despite testifying to the contrary. Relator further concedes that he and Pro Staff understood that Pro Staff would no longer assist relator in finding work if he quit his assignment with Universal on July 1. Relator argues that the ULJ's credibility determinations require reversal of the decision because substantial evidence does not support (1) the ULJ's presumption that Koolen told the truth in her documentation of the conversation; (2) the ULJ's finding that Nguyen's testimony about the content of the conversation was more

credible than relator's testimony; and (3) the ULJ's implicit finding that there was no language barrier between relator and Koolen.

A. Koolen's documentation

The ULJ reasoned that the content of Koolen's documentation of the conversation was reliable evidence because "it is simply not credible that Koolen would state that she asked [relator] for a reason why he was quitting, and that [relator] refused to give a reason, if that was not in fact the case." Relator first argues that the ULJ's credibility determination about Koolen's documentation was not supported by evidence in the record because Koolen did not testify. Relator's argument is misguided because the ULJ's finding addressed whether Koolen's documentation was reliable evidence, not Koolen's credibility.

Next, relator asserts that the ULJ exhibited bias in favor of Pro Staff in presuming that Koolen told the truth in the documentation of the conversation. Relator cites no caselaw in support of his assertion. Further, when evidence conflicts, the ULJ must determine which witnesses are more credible and what evidence is reliable. Minn. Stat. § 268.105, subd. 1a (2016). There is no indication that the ULJ's determination that Koolen's documentation was reliable evidence was the product of the ULJ's bias.

B. Nguyen's testimony

Relator argues that the ULJ's determination that Nguyen's testimony was more credible than relator's is improper because the ULJ asked Nguyen hypothetical questions and received speculative responses about the content of the conversation. We disagree.

“When the credibility of a witness testifying in a hearing has a significant effect on the outcome of the decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a). This court will affirm a ULJ’s credibility determination where the witness’s testimony was “very detailed and specific.” *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). Here, the ULJ determined that Nguyen’s testimony was more credible than relator’s “because it was detailed and specific, because it was more plausible and certain, and because it was corroborated by Koolen’s note in [Pro Staff’s] computer system.”

Nguyen’s testimony had a substantial effect on the outcome of the ULJ’s decision because it addressed whether relator notified Pro Staff of his knee pain and requested accommodation. The ULJ did not err by finding that Nguyen’s testimony was more detailed, specific, plausible, and certain than relator’s due in part to Nguyen’s knowledge of Pro Staff’s procedures. For example, Nguyen testified that it was not possible that relator told Koolen about his knee pain because this would have prompted Koolen to advise relator “to release himself from the position” so that Pro Staff could find work that accommodated his needs. In addition, Nguyen testified that Koolen would have asked relator to stay at Universal for one more week in an attempt to receive notice from relator prior to ending his assignment, which would have allowed Pro Staff time to find a replacement employee. Accordingly, there is substantial evidence to support the ULJ’s determination with regard to Nguyen’s testimony.

Relator also argues that the ULJ exaggerated the corroborative value of Koolen’s documentation of the conversation as a contemporaneous business record. However, a

ULJ “is not bound by statutory and common law rules of evidence.” Minn. R. 3310.2922 (2015). A ULJ may use the rules of evidence “as a guide in determining the quality of evidence offered.” *Id.* Further, a ULJ may consider whether a witness’s testimony was “corroborated by other testimony and evidence.” *Ywsyf*, 726 N.W.2d at 532. Relator does not cite to any caselaw to support his argument that the ULJ was required to analyze Koolen’s documentation of the conversation under Minn. R. Evid. 803(6), and it would be contrary to rule 3310.2922. Thus, the ULJ properly considered Koolen’s documentation of the conversation as evidence that corroborated Nguyen’s testimony.

C. The language barrier

The ULJ did not make an explicit finding about whether a language barrier affected the conversation. However, Nguyen testified that she had previous conversations with relator that were “able to be followed through” in English. In addition, the record reflects that relator successfully communicated to and understood the Universal employees when he told them that he was experiencing knee pain and requested an accommodation, and they told him to call Pro Staff. Accordingly, this court defers to the ULJ’s implicit determination that a language barrier did not affect the conversation because it is substantially sustained by the evidence.

II. The ULJ followed proper procedures.

Relator argues that his substantial rights were prejudiced because the ULJ followed unlawful procedures by (1) failing to fully develop the record; (2) failing to make written findings on the evidence presented; and (3) improperly imposing a burden of proof on relator. Relator’s specific arguments are addressed in turn.

A. The ULJ did not fail to fully develop the record.

“We will reverse a ULJ’s decision if it was made on an unlawful procedure.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). A ULJ “must assist all parties in the presentation of evidence” and “ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2015). “The unemployment law judge may issue a subpoena even if a party has not requested one.” Minn. R. 3310.2924 (2015). However, that a ULJ should assist all parties in presenting evidence does not mean that the ULJ is a party’s advocate. *Stassen*, 814 N.W.2d at 32.

Relator first argues that the ULJ failed to fully develop the record and assist relator in presenting important evidence because the ULJ did not take any steps to obtain testimony from the Universal employees on whether relator communicated his knee pain to them or ask relator questions about his communications with them. We disagree.

Here, the ULJ made a statement at the beginning of the evidentiary hearing informing the parties that they “have the right to request the hearing be rescheduled so that additional witnesses and documents can be presented by subpoena if necessary.” The ULJ also provided the parties with appropriate opportunities to supplement the record during and after the hearing. Neither relator nor his attorney requested that the Universal employees testify at the hearing.

Moreover, the communications between relator and the Universal employees, which occurred nine to ten days before relator called Pro Staff, were not relevant to determine the content of the conversation between relator and Koolen. The Universal employees did not

overhear the conversation. And Universal was not relator's employer. Thus, the ULJ did not need to sua sponte subpoena the Universal employees.

Relator next argues that the ULJ failed to fully develop the record because the ULJ declined to accept into evidence relator's February 2016 medical statement. We are not persuaded.

The ULJ excluded the February 2016 medical statement because "it [would] not help her make her decision." The statement was not necessary to the ULJ's determination because any inconsistency between the February statement and the July 2016 medical statement from relator's post-employment doctor's visit was already explained through relator's testimony. In addition, the February 2016 medical statement, which addressed relator's treated back pain, was not relevant to explain why he quit the position at Universal due to knee pain. Accordingly, the ULJ did not fail to fully develop the record.

B. The ULJ did not fail to make written findings on the evidence.

A ULJ is required to "make written findings of fact, reasons for decision, and decision" after the evidentiary hearing and send those to all parties. Minn. Stat. § 268.105, subd. 1a(a).

Relator first argues that the ULJ failed to make written findings on whether relator sought an accommodation for his knee pain when he spoke with the Universal employees. Relator's argument lacks merit. As analyzed above, relator's communications with the Universal employees were not relevant to the ULJ's determination.

Second, relator contends that the ULJ failed to make written findings on whether relator's English-language proficiency affected the conversation. We disagree because, as

noted previously, the ULJ's implicit finding on the language barrier is substantially sustained by the evidence.

Relator's third argument is that the ULJ failed to make consistent findings about whether relator experienced knee pain. We are not persuaded because the ULJ consistently acknowledged that relator was experiencing knee pain. Moreover, the ULJ did not cast doubt on whether relator experienced knee pain; rather, the ULJ doubted whether relator communicated his medical problem to Pro Staff and requested accommodation.

C. The ULJ did not impose an improper burden of proof on relator.

Relator argues that the ULJ improperly placed a burden of proof on him when the ULJ noted that he did not call Koolen as a witness. We disagree.

In both a letter that relator submitted after the hearing and his request for reconsideration, relator takes issue with the ULJ's reliance on Nguyen's testimony and Koolen's documentation of the conversation as evidence of its content. When read in context, the ULJ's statement that relator could have called Koolen as a witness is a comment made in response to relator's subsequent correspondence. Thus, the ULJ did not place an improper burden on relator to call Koolen as a witness, and relator's substantial rights were not prejudiced.

Affirmed.