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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0370**

A. A. A.,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed October 30, 2017
Reversed
Florey, Judge**

Minnesota Department of Human Services
File No. 75291

Nancy Hylden, Hylden Advocacy & Law, Minneapolis, Minnesota (for relator)

Lori Swanson, Attorney General, Heather N. Kjos, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Schellhas, Judge; and
Kalitowski, Judge.*

UNPUBLISHED OPINION

FLOREY, Judge

Following a background check, relator was disqualified from working as a
nonemergency medical-transportation taxi driver. His disqualification is based on an

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

alleged criminal act. Because there is insufficient evidence that he committed that act, we reverse.

FACTS

Relator A. A. A. worked for a taxi company. In June 2016, the taxi company submitted a background-study request for relator to the Minnesota Department of Human Services (DHS). DHS performed a background study, which revealed that, in 2008, relator was charged with one count of second-degree sexual assault in Wisconsin. The information surrounding that charge was essentially limited to a probable-cause statement contained in a 2008 criminal complaint.

According to that complaint, at around 11:00 p.m., on March 18, 2008, a woman, M.A.J., took a taxi to a motel in Wisconsin. At around 1:00 a.m., she arrived at the motel and checked into her room. The taxi driver helped carry her bags into her room. She heard the door close, and then the taxi driver pushed her onto the bed. She screamed and fought with the attacker. However, he overpowered her and raped her. The following day, she reported the sexual assault. An evidence-collection kit was used, and an examination revealed that M.A.J. had significant bruising on her inner thigh. An investigator spoke with taxi dispatchers, and records revealed that relator had picked up M.A.J. on March 18 at 11:30 p.m. A photo line-up was constructed, and M.A.J. identified relator as her assailant.¹

¹ According to relator's brief, M.A.J. died in 2009.

A warrant was issued, and relator was arrested in Anoka County, Minnesota, and extradited to Wisconsin to face the sexual-assault charge. However, on April 21, 2008, the charge was dismissed without prejudice. Relator later received an expungement in Anoka County of records relating to his arrest, booking, and transfer to Wisconsin.

Based on the results of the background study, DHS informed relator that he was permanently disqualified from “any position allowing direct contact with, or access to, persons receiving services from programs licensed by [DHS] and the Minnesota Department of Health,” as well as certain programs subject to mandatory background studies. The disqualification affected relator’s ability to work as a nonemergency medical-transportation driver. He was informed that he was disqualified because a preponderance of the evidence established that he committed an act that met the definition of criminal sexual conduct in the fifth degree, as defined under Minn. Stat. § 609.3451 (2016). He was given 30 days to request reconsideration of that determination.

In October 2016, relator was notified that a request for reconsideration was not received in the time required. He was informed that if he submitted a request for reconsideration, it may still be reviewed, but his further appeal rights may be affected. DHS subsequently received and reviewed a request for reconsideration submitted in December 2016. In January 2017, DHS notified relator that it had decided to affirm the disqualification. Relator appeals that decision by way of a writ of certiorari.

D E C I S I O N

Relator challenges his disqualification in two ways. He argues that there was insufficient evidence that he committed a disqualifying act, and he also raises an equal-

protection argument. We need only address relator's challenge concerning the sufficiency of the evidence, which we conclude is lacking in this case.

The parties agree that the decision being appealed represents a quasi-judicial decision not subject to the Administrative Procedure Act, Minn. Stat. §§14.001-.69 (2016). For such decisions, we review the record and examine “questions affecting the jurisdiction of the agency, the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Apr. 17, 2012).

The background study in this case was conducted in accordance with the Department of Human Services Background Studies Act (Background Studies Act), Minn. Stat. §§ 245C.01-.34 (2016). See Minn. Stat. § 174.30, subd. 10(a) (2016) (requiring studies conducted in accordance with the Background Studies Act for certain individuals affiliated with regulated “special transportation service” providers). Under the Background Studies Act, relator is disqualified from certain positions if “a preponderance of the evidence indicates [he] has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15.” Minn. Stat. § 245C.14, subd. 1(a)(2).

Section 245C.15, subd. 1(a), lists a number of disqualifying crimes, including criminal sexual conduct in the fifth degree, as defined under Minn. Stat. § 609.3451. Section 245C.15, subd. 1(c), states that offenses committed in other states also qualify as disqualifying crimes “where the elements of the offense are substantially similar” to the

offenses listed under 245C.15, subd. 1(a). Criminal sexual conduct in the fifth degree, under Minn. Stat. § 609.3451, includes “nonconsensual sexual contact,” and “sexual contact” includes “intentional touching by the actor of the complainant’s intimate parts.” Minn. Stat. §§ 609.341, subd. 11(a)(i) (2016), .3451, subd. 1(1).

Relator was disqualified based on DHS’s determination that a preponderance of the evidence established that he committed an act qualifying as criminal sexual conduct in the fifth degree. His disqualification is based on the approximately one page probable-cause statement contained in the 2008 criminal complaint from Wisconsin. The complaint is almost entirely composed of allegations by M.A.J. The veracity of these allegations is untested and questionable given that the complaint was dismissed 24 days after it was signed. There are no police reports, medical reports, or witness statements, and it does not appear that the criminal proceedings ever reached a stage where additional evidence or testimony was presented. The complaint states that M.A.J. “had a sexual assault evidence collection kit done and upon examination it was discovered there was significant bruising on her inner thigh area.” However, it is unclear how this information was obtained, whether M.A.J. simply told the investigator that an examination had been performed, or if the investigator spoke with additional witnesses or medical personnel. The complaint notes that the investigator spoke with taxi dispatchers, and records indicated that relator picked M.A.J up on March 18, 2008. However, it is unclear if relator was randomly assigned to pick up M.A.J., or if relator and M.A.J. were familiar with each other and made arrangements for the taxi ride to Wisconsin. The complaint raises more questions than it answers. Given the lack of evidence, and the dearth of any supporting records, reports, or

documentation, we must conclude that the preponderance of the evidence standard could not be met.

Respondent commissioner of human services points to a December 2016 letter wherein relator claimed that M.A.J. was his ex-girlfriend, there was no physical contact between them that evening, she became upset that he would not return to her location, and she contacted the police. Respondent contends that this version of events is inconsistent with relator's Anoka expungement petition, wherein relator stated that he did not know the name of the complainant. Respondent asserts that relator has changed his story; first he did not know the victim, and now the victim is his ex-girlfriend. However, the "complainant" listed in the 2008 complaint was the investigator who prepared the complaint, not M.A.J. Therefore, it does not appear that there is an inconsistency.

There is simply no evidence in this case to support a determination, by a preponderance of the evidence, that relator committed criminal sexual conduct in the fifth degree, as defined under Minn. Stat. § 609.3451. We therefore reverse respondent's determination that relator committed that disqualifying act, as well as relator's disqualification.

Reversed.