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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1093**

Anthony Browne,
Relator,

vs.

M. A. Mortenson Company, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 9, 2018
Affirmed
Hooten, Judge**

Department of Employment and Economic Development
File No. 34273692-9

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(for relator)

M.A. Mortenson Company, Inc., St. Louis, Missouri (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator challenges the decision of an unemployment law judge (ULJ) that he is ineligible for unemployment benefits after electing to quit his employment. He contends that the ULJ erred by considering the testimony of the respondent-employer's witnesses to be credible in light of other evidence. He also argues that, even if he had quit his employment, the ULJ erred by determining that the statutory child care exception did not apply. Because substantial evidence in the record supports the ULJ's credibility determination, and because the respondent-employer offered a reasonable accommodation that made the child care exception inapplicable, we affirm.

FACTS

This case involves a second appeal from a ULJ's decision that relator Anthony Browne was ineligible for unemployment benefits for a short time period after his employment with M.A. Mortenson ended in December 2014. Much of the factual and procedural history is detailed in our previous opinion, which reversed and remanded the ULJ's initial decision for additional findings. *See Browne v. M.A. Mortenson Co., Inc.*, No. A16-0730, 2017 WL 279570 (Minn. App. Jan. 23, 2017). As the result of a second evidentiary hearing, however, the record of the underlying facts has been more fully developed.

Browne was employed as a cement mason for Rainbow, a construction company, on a seasonal basis for several years. His work typically ended during the winter months, at which time he assisted in taking care of his two school-age children while his wife

increased her work schedule. His wife was normally the primary care provider for their children and his mother served as the secondary provider. Because the children attended school outside of their district, they required transportation from either Browne, his wife, or his mother.

In mid-October 2014, Rainbow laid off Browne earlier than usual. Browne was then hired by respondent M.A. Mortenson, another construction company, as a cement mason in late October. In early December, while Browne was working at Mortenson and as his wife had increased her own workload, his mother became ill and could not drive his children to school. His wife altered her work schedule for the first week of December to drive the children. Browne and his wife explored other possibilities to transport their children to school, including a shuttle service and daycare centers, but did not find a service that could accommodate their needs.

On December 8, Browne informed his foreman, Jay Quarnstrom, that he could not continue working at Mortenson because he needed to care for his children. Browne asked Quarnstrom for a reduced work schedule, but Quarnstrom denied the request because he needed Browne to work full-time. Three days later, Browne's mother was hospitalized. Even though Browne knew that Mortenson had work available, he requested that Quarnstrom approve a layoff from work. In denying Brown's request, Quarnstrom explained to Browne that any time he took off from work would be considered voluntary. Quarnstrom then notified his field operations manager that Browne had quit. The field operations manager entered a human-resources form, dated December 12, indicating that Browne's separation was voluntary and that he had quit.

Browne applied for an unemployment-benefits account to be effective on December 14, 2014. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Browne was ineligible for unemployment benefits due to his voluntary separation from Mortenson for the time period from December 14, 2014 to the date when he returned to work for Rainbow in February 2015. Browne then contacted Mortenson to address his claim for unemployment benefits. In an effort to assist Browne, the field operations manager amended and backdated the human-resources form, dated December 11, 2014, to provide that Browne's separation was involuntary and due to a workforce reduction. After holding an evidentiary hearing, the ULJ initially decided that Browne was ineligible for unemployment benefits because he took a voluntary leave of absence. We reversed and remanded the ULJ's order, directing the ULJ to make additional findings. *See Browne*, 2017 WL 279570, at *6.

On remand, the ULJ conducted a second evidentiary hearing, at which Quarnstrom and a human-resources representative testified on Mortenson's behalf. Finding that Quarnstrom and the human-resources representative "offered a complete picture of the events," the ULJ issued a decision determining that Browne had quit his employment at Mortenson. The ULJ reasoned that Browne controlled the decision to end his employment despite the available work and that Mortenson had provided a reasonable accommodation in the form of a voluntary leave of absence for six weeks. The ULJ also concluded that Browne did not quit due to a loss of child care because he failed to make reasonable efforts to obtain other child care before quitting, as required by Minn. Stat. § 268.095, subd. 1(8).

(2016). Browne sought reconsideration of the decision. The ULJ affirmed the decision, reiterating that Quarnstrom's testimony was both credible and reliable.

This second certiorari appeal followed.

D E C I S I O N

Browne contends that the ULJ erred by finding the testimony of Mortenson's witnesses to be credible in light of the substantial evidence in the record. He also asserts that the ULJ erred by determining that the child care exception under Minn. Stat. § 268.095, subd. 1(8) did not apply to his circumstances. We may reverse, remand, or modify a ULJ's decision if a relator's substantial rights have been prejudiced because the findings, conclusions, or decisions are affected by an error of law, lacked the support of substantial evidence in the record, or was arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(4)–(6) (2016).

I.

Browne claims that the ULJ's decision is arbitrary and capricious and unsupported by substantial evidence in the record because the ULJ failed to adequately evaluate the credibility of the witnesses' testimony and failed to address the inconsistencies in Mortenson's paperwork. Substantial evidence is defined as “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quotation omitted). Appellate courts review the ULJ's factual findings “in the light most favorable to the decision and will not disturb those findings as long as

there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotation omitted).

We defer to the ULJ on credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Indeed, “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). And we do not reweigh the evidence on appeal. *See Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (“When witness credibility and conflicting evidence are at issue, we defer to the decision-maker’s ability to weigh the evidence and make those determinations.”).

The ULJ determined that Mortenson’s witnesses “offered a complete picture of the events” and that Quarnstrom’s testimony regarding work availability was credible. Quarnstrom testified that when Browne told him that he wanted to take time off from work, Quarnstrom stated, “[W]ell, if you’re taking time off, then you’re taking it voluntarily, because I still ha[ve] work at the Vikings Stadium.” Quarnstrom also testified that “there was constant work at the time” and that after Browne mentioned that he would be taking his own time off, Quarnstrom called the field operations manager and said, “I need a replacement now because apparently he’s quitting on me.” At the hearing, Browne admitted that he knew that work was still available before leaving Mortenson. Due to the consistency in both Browne’s and Quarnstrom’s versions of the events, we conclude that the ULJ’s credibility determination, which is based on their assertions that work was available, is supported by substantial evidence.

Browne’s argument also depends on a statute which provides that “[w]hen the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a (2016); *see also Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531–32 (Minn. App. 2007). “When assessing witness credibility, the ULJ may consider all relevant factors, including, but not limited to, the witness’s interest in the case’s outcome, the source of the witness’s information, the witness’s demeanor and experience, and the reasonableness of the witness’s testimony.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007). In making credibility determinations, the ULJ may also take into account whether a witness’s testimony is “reasonable compared with other evidence” and “corroborated by other testimony and evidence.” *Ywswf*, 726 N.W.2d at 532–33.

Browne contends that discrepancies between Mortenson’s human-resources representative and Quarnstrom’s testimony regarding Browne’s proposed scheduling accommodation demonstrate that the ULJ erred in making her credibility determination. The human-resources representative testified that Quarnstrom had told her “there was no formal accommodation requested” and that Browne did not request a change in his schedule. At the hearing, Quarnstrom at first testified that Browne did not ask for an accommodation or a later start time but later stated that he believed he did have a conversation with Browne in which Browne ask for a reduced work schedule. While there may have been no “formal” accommodation requested, the evidence indicates that Browne did, at least informally, ask Quarnstrom for an accommodation. The testimony of both the

human-resources representative and Quarnstrom is consistent in that Browne approached Quarnstrom requesting a layoff. The ULJ found that Mortenson was willing to accommodate Browne by allowing him to take a leave from work, but with the expectation that he could return in about six weeks.

This leads to Browne's next challenge of Quarnstrom's credibility regarding whether he would have been able to return to work at Mortenson.¹ When questioned whether Browne asked for any time off from work, Quarnstrom first stated he did not recall. He then explained that he did not give Browne the option of returning in six weeks because he needed to replace him. But when later asked if he expected Browne to return to Mortenson, he said, "Yep, yep. That was a possibility." Despite the fact that Quarnstrom's recollection of the events is not perfect, the ULJ must have determined that this last response was credible and consistent with Browne's version of the events. The following exchange occurred between the ULJ and Browne at the second evidentiary hearing:

ULJ: All right. So when you were faced with, on December 11, when you approached Mr. Quarnstrom, and it came to the point of making the decision to end, you know, to, to separate from the employment and not return, would you say that was your decision or Mr. Quarnstrom's decision?

BROWNE: Mr. Quarnstrom, as a good-hearted gesture, faced with the information that I just shared with you, I shared with him, and it was left open for me to go back, and I never went back, 'cause as my mother was getting better, my primary employer, Rainbow, Incorporated, called me back in February.

¹ Browne also contends that Mortenson's paperwork, including the two human-resources forms and additional forms from its financial agent, highlights errors in the ULJ's credibility determination. Although Mortenson's differing explanations for Browne's separation from employment in the two human-resources forms is odd, none of the paperwork is inherently inconsistent with the testimony provided at the second evidentiary hearing.

ULJ: Okay. So you're saying it was left open ended with the possibility that you might return, or could return.
BROWNE: Yes, ma'am.

Both Browne's and Quarnstrom's testimony indicates that Mortenson remained open to Browne returning to work after resolving his personal issues.

Unlike in *Wichmann*, where the ULJ failed to make any credibility determinations, the ULJ here explained why she determined that Quarnstrom's testimony was reliable. See *Wichmann*, 729 N.W.2d at 29 (concluding that ULJ did not satisfy requirement of prior version of Minn. Stat. § 268.105, subd. 1a, because ULJ made findings that relied on credibility assessment but failed to make credibility determinations). While the ULJ's rationale for Quarnstrom's credibility may not be as thorough and detailed as desired, it is clear that the ULJ found Quarnstrom's testimony to be reasonable and consistent in that Mortenson had work available and that Browne's departure was voluntary due to family-related issues. This supports the ULJ's ultimate decision that Browne chose to end his employment with Mortenson. We conclude that the ULJ's credibility determination was sufficient to meet the statutory requirement of Minn. Stat. § 268.105, subd. 1a.

II.

Browne also contends that, even if he quit his employment at Mortenson, the ULJ erred by determining that the child care exception, pursuant to Minn. Stat. § 268.095, subd. 1(8), does not apply. Whether an employee who quits falls within an exception that

qualifies him for unemployment benefits is a question of law that we review de novo. See *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

If an applicant for unemployment benefits quit his employment, he is ineligible for benefits unless he fits into a statutory exception. Minn. Stat. § 268.095, subd. 1 (2016). Under this statute, an applicant may be eligible for unemployment benefits even after quitting his employment if “the applicant’s loss of child care for the applicant’s minor child caused the applicant to quit the employment, provided the applicant made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation is available.” *Id.*, subd. 1(8).

The ULJ found that Browne could not provide transportation for his children’s schooling because his wife had increased her work hours and his mother became ill. But the ULJ determined that the child care exception did not apply because Browne failed to make a reasonable effort in obtaining alternative child care before ending his employment at Mortenson. The ULJ reasoned that, although Browne searched for public transportation services, including a shuttle service and daycare centers, he made no effort to arrange any private transportation such as shared rides with other families. The ULJ also explained that Browne’s wife appeared capable of altering her work schedule to continue driving the children.

Browne claims that the ULJ should have determined that he made reasonable efforts sufficient to qualify him for unemployment benefits under this exception. We disagree. Even assuming without deciding that the child care exception encompasses school transportation, this exception does not apply if a reasonable accommodation is available.

See id. As we detailed previously, the evidence in the record indicates that Mortenson had offered Browne an accommodation with the possibility that he could return to work. Browne explicitly agreed that Quarnstrom was accommodating his request to allow him the opportunity to facilitate his personal family issues. We conclude that this constitutes a reasonable accommodation under the statute.

Because Mortenson had offered Browne a reasonable accommodation, we do not need to determine whether Browne exercised reasonable efforts in finding alternative child care. We therefore conclude that the ULJ did not err by determining that Browne does not qualify for the child care exception under Minn. Stat. § 268.095, subd. 1(8).

Affirmed.