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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0435**

Bruce F. Filson DDS PA,
Relator,

vs.

Kelly Yocom,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 30, 2019
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 36548460-4

John M. Degnan, Ruvin S. Jayasuriya, Briggs and Morgan, P.A., Minneapolis, Minnesota
(for relator)

Kelly Yocom, Hudson, Wisconsin (*pro se* respondent)

Anne B. Froelich, Keri A. Phillips, St. Paul, Minnesota (for respondent department)

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Relator Bruce F. Filson challenges the decision of an unemployment-law judge (ULJ) to grant respondent Kelly Yocom unemployment benefits, arguing that (1) the decision was unsupported by substantial evidence, (2) the decision was made upon unlawful procedure, and (3) the decision was arbitrary and capricious. Filson and Respondent Department of Employment and Economic Development (DEED) also argue that the matter should be remanded for an additional hearing. The ULJ's ruling was based on a credibility determination and on a proper conclusion that the additional testimony at a rehearing, even assuming the anticipated testimony to be true, would not change the outcome of the decision. Therefore, we affirm.

FACTS

Bruce Filson owns and operates Filson Gentle Dentistry in Bayport. From August 1990 to May 2018, Yocom worked for Filson in several roles, most recently as the office manager.

As office manager, Yocom regularly purchased items and supplies for the office with her personal credit card and submitted these expenses for reimbursement. Yocom also received an \$85 "shopping fee" and \$25 for mileage when she shopped outside of work hours.

Until her retirement in November 2017, Filson's bookkeeper was D.M. The ULJ found that when submitting expenses for reimbursement, "Yocom wrote down her

purchases on a piece of paper and submitted the paper, along with the receipts, to [D.M.] for reimbursement.”

K.R. replaced D.M. as the new bookkeeper. Shortly after starting as bookkeeper, K.R. had concerns that Yocom was reimbursing herself for unauthorized expenses. K.R. brought these concerns to Filson’s attention, and on May 18, 2018, Filson fired Yocom.

Yocom filed for unemployment benefits. DEED determined that Yocom was ineligible for benefits because “[t]he evidence show[ed] that [Yocom] stole or gave away money, property, or services without authorization.” Yocom appealed.

On November 28, 2018, the ULJ held an evidentiary hearing by telephone. Both Yocom and Filson appeared and were represented by counsel. The ULJ questioned Filson and Yocom extensively about the alleged thefts. Filson denied authorizing Yocom to make the purchases. Yocom provided explanations for each purchase and claimed that Filson authorized the purchases.

The ULJ also questioned Filson about several expense reports in the record that were prepared by K.R. to which Filson signed his name next to the word “approved.” Filson testified that his signature did not represent his approval but rather his acknowledgement that he saw the report.

The ULJ reversed DEED’s ineligibility determination. The ULJ found that “[t]he preponderance of the evidence shows that Yocom did not steal any money from Bruce F. Filson DDS PA or obtain any reimbursements that were not authorized or approved by Dr. Filson.” The ULJ further found: “Yocom was able to provide detailed and specific information about the reimbursements she received and her explanation was more

believable than Dr. Filson’s denial that he did not authorize the purchases or reimbursements.”

Filson requested reconsideration, and in support of this request, Filson included sworn affidavits from Filson’s two bookkeepers, D.M. and K.R. D.M.’s affidavit stated that her only role was to “file the expense reimbursements” submitted by Yocom and that she did not obtain approval from Dr. Filson for the reimbursements. K.R.’s affidavit stated that Filson’s signatures on the reimbursement forms did not represent Filson’s approval of the reimbursement but were instead Filson’s way of acknowledging his receipt of the documents.

On February 14, 2019, the ULJ affirmed his prior order, noting that the “new evidence does not show that Yocom’s testimony was likely false.” He also noted that K.R.’s claim that Filson’s signature on the expense report was simply an acknowledgment that he saw the report “do[es] not make logical sense and [does] not show that Yocom’s testimony was likely false.” This *certiorari* appeal follows.

D E C I S I O N

This court reviews a ULJ’s decision and may affirm, remand, reverse, or modify the decision. Minn. Stat. § 268.105, subd. 7(d) (2018). Filson argues three grounds to support a reversal. We may affirm, reverse, remand, or modify the ULJ’s decision

if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

. . . .

(3) made upon unlawful procedure;

. . . .

- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Id. We consider Filson’s claims in reverse order.

I. The ULJ’s decision is not arbitrary and capricious.

Filson makes two arguments that the ULJ’s decision was arbitrary and capricious:

(A) the ULJ erred in denying an additional hearing, and (B) the ULJ’s decision does not represent the agency’s judgment.

A. The ULJ did not abuse his discretion in denying an additional hearing.

Both Filson and DEED contend that the ULJ abused his discretion in denying an additional hearing to consider D.M.’s and K.R.’s testimony. We review a ULJ’s denial of a request for an additional evidentiary hearing for an abuse of discretion. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Minn. Stat. § 268.105, subd. 2(c) (2018), provides that a ULJ must order an additional hearing if a party shows that evidence which was not submitted at the hearing:

- (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or
- (2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

“Good cause” for purposes of this paragraph is a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.

Filson and DEED rely on subdivision 2(c)(2), arguing that D.M.’s and K.R.’s affidavits show that Yocom’s testimony was likely false, and that this likely false evidence had an effect on the ULJ’s decision. The ULJ’s credibility findings, to which we give

deference, *Peterson v. Nw. Airlines. Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008), compel us to disagree.

D.M.'s and K.R.'s affidavits claim that they did not obtain Filson's approval for reimbursing Yocom. Even if true, however, this does not have the requisite "effect on the outcome of the decision." *Id.*, subd. 2(c)(2).

The ULJ expressly found credible Yocom's testimony that Filson provided authorization for all her submitted expenses: "Yocom was able to provide detailed and specific information about the reimbursements she received and her explanation was more believable than Dr. Filson's denial that he did not authorize the purchases or reimbursements." We generally defer to the ULJ's credibility determinations. *Peterson*, 753 N.W.2d at 774. Thus, even if D.M. and K.R. did not obtain Filson's approval for the expenses, the ULJ found credible Yocom's testimony that Filson did authorize the expenses. That D.M. and K.R. did not personally obtain Filson's approval is immaterial to the ULJ's decision. The ULJ did not abuse his discretion by denying an additional hearing.

Filson also makes an alternative argument pursuant to Minn. Stat. § 268.105, subd. 2(c)(1). Section 268.105, subdivision 2(c)(1), provides that an additional hearing should be granted when there is evidence not submitted that "would likely change the outcome of the decision and that there was good cause for not having previously submitted that evidence." Filson again points to K.R.'s claim that she did not obtain Filson's approval for the reimbursements. First, as noted, K.R.'s testimony would not "change the outcome of the decision." Minn. Stat. § 268.105, subd. 2(c)(1). Second, Filson cannot show good

cause for failing to offer K.R.’s testimony at the hearing. Although Filson claims that the ULJ refused to hear from K.R., this misstates the record.

The ULJ did not hear from K.R. because Filson—despite being represented by counsel—did not call K.R. as a witness. Filson merely asked the ULJ at several points during the hearing if the ULJ wanted to hear from K.R., and the ULJ declined. The statute defines “[g]ood cause” as “a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.” Minn. Stat. § 268.105, subd. 2(a). Filson’s failure to call K.R. as a witness does not qualify. Thus, the ULJ did not abuse his discretion in denying an additional hearing.

B. The ULJ’s decision does not represent the agency’s will.

Filson next argues that the ULJ’s decision represents the agency’s will. An agency ruling is arbitrary and capricious if the ruling “represents the agency’s will and not its judgment.” *In re Review of 2005 Annual Automatic Adjustment of Charges for All Elect. & Gas Utils*, 768 N.W.2d 112, 118 (Minn. 2009).

Filson attacks the ULJ’s examination of Filson over the meaning of his signature next to the word “approved” on the expense reports. Filson testified that his signature did not represent his approval but rather his acknowledgement that he saw the report. The ULJ did not find this credible, noting that Filson

refused to acknowledge that he authorized the expense reports submitted by Yocom . . . even though his signature appears on the expense reports showing he approved and authorized the reimbursements to Yocom. Dr. Filson’s explanation that he was signing the expense reports simply to confirm or acknowledge that Yocom was requesting reimbursements . . . was not convincing or persuasive.

Filson argues that the ULJ misunderstood the testimony and then, based on this misunderstanding, questioned Filson's credibility. We do not so interpret the record. *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995). (holding that appellate courts do not reweigh evidence). Rather than misunderstanding Filson's testimony, the ULJ simply did not find Filson's explanation credible. We defer to the ULJ's credibility determinations. *Peterson*, 753 N.W.2d at 774. The ULJ's disbelief of Filson does not mean that the ULJ's decision represents the "agency's will and not its judgment" and, therefore, the decision is not arbitrary and capricious.

II. The ULJ's decision is supported by substantial evidence.

Filson contends that the ULJ's decision was unsupported by substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gonzalez Diaz v. Three Rivers Community Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018).

Filson argues that the ULJ improperly based his decision solely on Yocom's credibility and Filson's signature on the expense reimbursement documents. Filson also argues that the ULJ ignored evidence to the contrary. We disagree.

The ULJ made a credibility determination and specifically found Yocom's testimony about Filson's authorization of the purchases credible. In contrast, the ULJ found Filson's testimony *not* credible. These are proper credibility determinations, and we defer to them. *Peterson*, 753 N.W.2d at 774. Further, the ULJ did not ignore evidence to

the contrary but instead did not find Filson's contrary testimony credible. We conclude that the ULJ's decision is supported by substantial evidence.

III. The ULJ's decision is based on lawful procedure.

We may reverse a ULJ's decision if it was "made upon unlawful procedure." Minn. Stat. § 268.105, subd. 7(d)(1). A ULJ "must ensure that all relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2017).

Filson argues that the ULJ failed to ensure all relevant facts were properly developed because the ULJ declined to hear from K.R. Filson also claims K.R. would have corroborated Filson's testimony.

For the reasons previously articulated, we disagree. The ULJ did not refuse to hear from K.R. The ULJ ensured that all relevant facts were developed, and therefore the ULJ's decision was not based on an unlawful procedure.

Affirmed.