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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0652**

Theodore Swantz,
Relator,

vs.

Premier Transportation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 18, 2020
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 36890946-4

Theodore Swantz, Lakeland, Minnesota (pro se relator)

Premier Transportation, Minneapolis, Minnesota (respondent)

Lossom Allen, Anne B. Froelich, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and
Bryan, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Relator Theodore Swantz challenges the determination of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he quit his employment and none of the statutory exceptions to unemployment ineligibility applies. Swantz argues that he is entitled to receive unemployment benefits because (1) he did not quit but instead only took a leave of absence, or, alternatively, (2) he was compelled to quit by a medical condition and his employer did not offer reasonable accommodations. We affirm.

FACTS

Swantz worked as a limousine driver for respondent Premier Transportation starting on January 1, 2008. In October 2017, Swantz had an epileptic seizure. Because of the seizure, Swantz's driver's license and his department of transportation (DOT) certificate—both of which were required to work as a limousine driver—were suspended. To get his license and the DOT certificate reinstated, Swantz needed to be seizure-free for 90 days and receive medical clearance from his doctor. While his license was suspended, Swantz did office work for Premier. He also received unemployment benefits after he applied and indicated that he was on a leave of absence. After 90 days passed without a second seizure, Swantz got his license and certificate reinstated and resumed driving.

A year later, in October 2018, Swantz suffered another seizure. His license and DOT certificate were again suspended, and Swantz's doctor told him that, this time, even if he was seizure-free for another 90 days, he might not be able to resume driving professionally.

On November 5, 2018, after receiving the news from his doctor, Swantz had a phone conversation with J.C., the owner of Premier. Swantz informed J.C. that his doctor said that he probably would not be able to drive professionally again. Swantz did not ask for a leave of absence or for any other accommodation. J.C. offered Swantz a position in the shop cleaning cars and doing other tasks. Swantz said he would not be able to drive the vehicles in and out of the shop, but J.C. told him that Premier had other people who could handle moving the vehicles. Swantz replied that he would think about it.

Swantz did not contact Premier again for over a month. During this time, he applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). J.C. testified that, after the November 5 phone call, she thought Swantz's employment with Premier was over. Swantz testified that he thought that he was still a Premier employee. But on a DEED questionnaire that he filled out, Swantz stated that he quit on October 29, 2018. He also stated on that questionnaire that he did not request an accommodation from Premier for his medical condition.

On December 7, 2018, Swantz called J.C. about getting some forms filled out for classes that he planned to take. During the call, Swantz told J.C. that he missed his job and was thinking of taking some classes in sales and marketing. He expressed interest in returning to Premier in a different capacity after completing his classes. J.C. told Swantz again that Premier had work available in its shop, but Swantz responded that he was not interested. J.C. testified that Swantz said that "he was better than [working in the shop]." Swantz testified that he rejected the position because he could not work in the shop since

he could not operate a power washer or other power equipment. Swantz admitted, however, that he and J.C. never discussed what his duties in the shop would be.

DEED subsequently denied Swantz's application for unemployment benefits. It determined that Swantz quit his employment and did not request an accommodation for his medical condition. Swantz appealed the DEED determination, and a hearing was held before a ULJ.

At the hearing, Swantz testified that he never told J.C. that he quit and that he had been confused when he stated on the unemployment questionnaire that he did not request an accommodation. J.C. testified that she offered alternative positions to Swantz but that he declined them, so she believed that he had quit. The ULJ found Swantz's testimony not credible and J.C.'s testimony credible. The ULJ concluded that Swantz was not on a leave of absence, that he quit his employment, and that no exception to unemployment ineligibility applies. Swantz filed a request for reconsideration with the ULJ, and, upon reconsideration, the ULJ affirmed his previous decision.

Swantz appeals by writ of certiorari.

D E C I S I O N

Appellate courts may only "reverse or modify the [ULJ's] decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision" violate constitutional provisions, exceed the department's statutory authority, were made after an unlawful procedure, are based on an error of law, are unsupported by the record evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2018). Appellate courts review 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) (quotations omitted). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). “The determination that an applicant is ineligible for unemployment benefits based on the facts of the case is reviewed de novo.” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 664 (Minn. App. 2016).

I.

Swantz argues that he should receive unemployment benefits, similar to how he received benefits after his first seizure, because, he claims, he was again on a leave of absence. Individuals on a leave of absence may be eligible for unemployment benefits. Minn. Stat. § 268.085, subd. 13a(a) (2018). “A leave of absence is a temporary stopping of work that has been approved by the employer.” *Id.*, subd. 13a(c) (2018).

The ULJ determined that Swantz was not on a leave of absence. The record supports that determination. Even if Swantz believed that he was on a leave of absence from work, which is a claim the ULJ did not find credible, Swantz still needed to obtain approval from his employer to be on a leave of absence. *See* Minn. Stat. § 268.085, subd. 13a(c). Swantz testified that he never requested a leave of absence. J.C. testified that she did not believe Swantz was on a leave of absence and that she believed Swantz’s employment ended on November 5, 2018, because he had turned down the position in the shop. J.C. also testified that Swantz had told her that he did not think he would be able to drive professionally again. The ULJ found credible J.C.’s testimony that Swantz was not on a leave, and we

will not disturb that credibility determination. On this record, the ULJ did not err by finding that Swantz was not on a leave of absence.

II.

Swantz also argues that he should receive unemployment benefits because Premier “did not offer any work [he] could do” and that “[he] did not want to stop working.” He states that Premier could have “offered to train [him] on something else.”

“A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2018). An applicant who has quit his employment is ineligible for unemployment benefits unless one of ten exceptions applies. Minn. Stat. § 268.095, subd. 1 (2018). “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2018). An employee who was discharged from employment is generally eligible for unemployment benefits unless the employee was discharged because of employment misconduct. *Id.*, subd. 4 (2018).

One of the ten exceptions to the rule that an employee who quits is ineligible for unemployment benefits is the medical exception. An applicant who quits employment “because the applicant’s serious illness or injury made it medically necessary that the applicant quit” may be entitled to unemployment benefits. Minn. Stat. § 268.095, subd. 1(7). “This exception only applies if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available.” *Id.*

Swantz's argument appears to be that he did not quit but rather was forced to stop working due to his medical condition. He argues that Premier failed to accommodate his medical condition by only offering him positions that he could not accept.

The record supports the ULJ's determination that Swantz quit his employment. While Swantz certainly did not choose to get sick, the record supports the ULJ's finding that it was Swantz's decision not to continue his employment at Premier. Swantz admitted in his testimony that Premier did not discharge him. Premier twice offered him a position in the shop, which he either explicitly rejected or failed to accept in a timely manner. Swantz argues that he could not accept the position in the shop due to his medical condition, but he never looked into whether it would have been possible with accommodation for him to work in the shop. Premier even proposed possible accommodations for him: when Swantz voiced concerns about not being able to drive the vehicles for the job in the shop, J.C. indicated that other employees could handle moving the vehicles. The record shows that Premier had positions available for Swantz but that he declined. On this record, the ULJ did not err by determining that Swantz quit, as defined under Minn. Stat. § 268.095, subd. 2(a).

The record also supports the ULJ's determination that the medical exception does not apply. Swantz's failure to explore possible accommodations also prevents him from receiving unemployment benefits under the medical exception to unemployment ineligibility. The medical exception applies only if the unemployment applicant informed the employer of the medical problem and requested accommodation. Swantz never asked for an accommodation, even after J.C. offered him a position in the shop and mentioned

possible accommodations. Swantz testified that he never asked for a leave of absence and that he never had a discussion with J.C. about accommodations for him to work in the shop. Swantz also stated on the DEED questionnaire that he did not request an accommodation. While Swantz testified at the hearing that he may have been confused about the question on the questionnaire, he still did not identify a time when he requested an accommodation from Premier. Swantz did tell J.C. in the December phone call that he was interested in working in sales and marketing, but he did so with the understanding that he needed to obtain some additional qualifications first. Because Swantz never requested an accommodation, he does not meet the requirements of the medical exception to unemployment ineligibility, as determined by the ULJ.

The record supports the ULJ's determination that Swantz is ineligible to receive unemployment benefits.

Affirmed.