

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1260**

S. K.,
Relator,

vs.

Minnesota Department of Health,
Respondent.

**Filed June 14, 2021
Affirmed
Reyes, Judge**

Minnesota Department of Health
Background Study No. 24245021

Eric H. Anderson, Anderson Defense, Minneapolis, Minnesota (for relator)

Keith Ellison, Attorney General, Kaitrin C. Vohs, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Relator challenges the commissioner's denial of his request for reconsideration to
set aside his disqualification from working with patients of its licensed programs as
arbitrary and capricious. We affirm.

FACTS

In April 2007, a district court convicted relator S.K. of felony first-degree driving while intoxicated (DWI). Based on that conviction, relator received a notice of disqualification that he was statutorily disqualified from performing certain jobs in facilities licensed by respondent Minnesota Department of Health (the commissioner). The commissioner ultimately set aside that disqualification.

In May 2019, a police officer received several reports of an intoxicated person leaving a Walmart. The officer followed the person, who was relator, in his vehicle and stopped him when he failed to use a turn signal. Relator's blood-alcohol content was over three times the legal limit. In September 2019, relator pleaded guilty to felony first-degree DWI. The district court sentenced relator to a 42-month stayed sentence and five years of probation, and ordered him to complete a chemical-dependency evaluation, complete random drug testing, not use alcohol or drugs, complete an impact panel, use alco-sensor monitoring, complete treatment, and attend sober-support meetings.

In June 2020, the Minnesota Department of Human services (MDHS) notified relator and his employer at the time, Highland Chateau, that he was disqualified from working there after a background study revealed the 2007 and 2019 felony first-degree DWIs. At Highland Chateau, relator worked as a licensed practical nurse where he administered medication, took doctor's orders, and provided daily care to the residents. The residents are adults in long-term care who rely on doctors, nurses, and staff for their daily needs.

Relator requested the commissioner reconsider and set aside the disqualification, asserting that he does not pose a risk of harm to the residents he serves at Highland Chateau. In addition to the standard form for requesting reconsideration, relator submitted a letter from his coworker at Highland Chateau and a copy of the police report regarding the May DWI. Relator's probation officer also had sent the commissioner a letter stating that relator had thus far complied with all probation conditions.

The commissioner denied relator's request for reconsideration and included a risk-of-harm assessment analyzing the statutory factors to set aside a disqualification. Relator appeals by a writ of certiorari.

DECISION

Relator challenges the commissioner's denial of his request for reconsideration to set aside his disqualification, arguing that the decision was arbitrary and capricious, unreasonable, and not supported by substantial evidence. We are not persuaded.

The Department of Human Services Background Studies Act, Minn. Stat. § 245C.01-.34 (2020), provides for disqualification of certain persons from working with licensed programs. Under Minn. Stat. § 245C.15, subd. 2(a), a person is disqualified for 15 years if convicted of a felony crime involving alcohol. A disqualified person may request reconsideration to set aside the disqualification. Minn. Stat. § 245C.21, .22. "The commissioner *may* set aside the disqualification if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant," Minn. Stat. § 245C.22, subd. 4(a) (emphasis added), based on these factors:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (9) any other information relevant to reconsideration.

Id., subd. 4(b). The burden rests on the individual to show that he does not pose a risk of harm. *Id.* In reviewing the request, the commissioner “*shall* give preeminent weight to the safety of each person” served by the program. *Id.*, subd. 3 (emphasis added). In addition, “any *single* factor under subdivision 4, paragraph (b), may be determinative” of the commissioner’s decision on a request to reconsider a set aside. *Id.* (emphasis added).

A decision on a request for reconsideration of a disqualification is a quasi-judicial decision. *Rodne v. Comm’r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996). An appellate court may reverse an administrative decision if it is not supported by substantial evidence or if it is arbitrary and capricious. *Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005) (citation omitted), *review denied* (Minn. Nov. 15, 2005). A quasi-judicial decision is arbitrary and capricious if there is no rational connection between the facts and the decision. *Id.*

Although only one of the nine factors is necessary to sustain the commissioner's denial of relator's request, we nonetheless analyze each factor of the commissioner's analysis for the support and substantial evidence in turn.¹

1. *The nature, severity, and consequences of the event or events that led to the disqualification*

The commissioner noted that relator had been convicted of first-degree DWI in both offenses. This is the most severe DWI penalty. In addition, relator had a blood-alcohol content over three times the legal limit in the second DWI. The commissioner reasonably determined that this factor supported denying the set aside and that determination is supported by substantial evidence in the record.

2. *Whether there is more than one disqualifying event*

The parties agree that there are two disqualifying events of two disqualifying convictions, which supports the commissioner's decision on this factor.

3. *The age and vulnerability of the victim at the time of the event*

The commissioner described the victim of the disqualifying event as "the community." Although general, the commissioner's assessment recognizes the danger to the public through relator's actions. However, relator is correct that the commissioner did not analyze the age and vulnerability of the victim. This factor is neutral.

¹ Relator also appears to argue that the commissioner must explicitly state it only relied on one factor, but he fails to cite any authority for that proposition. As such, he has forfeited this argument. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), review denied (Minn. Apr. 26, 2017).

4. *The harm suffered by the victim*

The commissioner simply noted that “[t]here was no direct harm.” The parties agree that this assessment is accurate. Additionally, DHS concedes this factor is neutral, and we agree.

5. *Vulnerability of persons served by the program*

The commissioner noted that the residents relator serves are vulnerable and depend on him for their daily needs. Relator argues that the commissioner did not explain how the residents are vulnerable. But the commissioner did in fact describe the residents’ vulnerability: they “rely on caregivers to provide them assistance with their daily living activities.” For the first time on appeal, relator argues that the residents are not dependent on him for basic needs as they have “full cognitive functioning” and other nurses would be able to assist. But relator also concedes in his brief and request for reconsideration that the residents “rely on [him] to administer their medications and also help with their activities of daily living to promote their wellbeing.” This fact is rationally connected to the denial because the safety of the residents is compromised if their caretaker is under the influence of alcohol or exercising poor judgment. This is the most compelling and relevant factor for denying relator’s request because the commissioner “shall give preeminent weight to the safety” of the people served. Minn. Stat. § 245C.22, subd.3. The commissioner reasonably determined that this factor strongly supported denying the set aside, which is supported by substantial evidence in the record.

6. *The similarity between the victim and persons served by the program*

The commissioner reasoned that the community members put at risk while relator was intoxicated and “[t]he people you would be caring for would be dependent on your sound judgment. If you failed to act responsibly while caring for vulnerable persons, serious harm could result.” In reaching this conclusion, the commissioner drew the similarity that both the community at large and the persons served by the program would be endangered by his poor judgment.

Relator counters that the performance reviews and letter from his coworker at Highland Chateau satisfy his burden on this factor that he has not exercised poor judgment in the past. But this factor goes to the similarity of the people at risk, and the record supports the commissioner’s rationale. This commissioner’s determination on this factor is reasonable and supported by substantial evidence in the record.

7. *The time elapsed without a repeat of the same or similar event*

The commissioner noted that little time has elapsed from the most recent similar offense. Relator does not address this factor. The commissioner reasonably relied on this substantial evidence in denying the set aside.

8. *Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event*

The commissioner acknowledged that relator completed a treatment program in January 2020, but incorrectly stated that relator did not submit a probation officer’s report that he has complied with conditions or proof of continued sobriety. Relator argues that the evidence does not support the commissioner’s determination.

As for the probation officer's report, relator's probation is ongoing for five years, only six months of which were included in the report. Because relator has not *completed* his probation, the commissioner did not need to accept the report as documentation of "successful completion." Even though relator submitted documents from the treatment program in January 2020 (the month he was sentenced), he failed to provide documentation of "continued sobriety." Relator did not submit any documents showing sobriety for the critical six-month period after his sentence. And the report from the treatment center states that relator "has minimal recognition and understanding of relapse and recidivism issues and displays moderate vulnerability for further substance use." Substantial evidence supports the commissioner's overall assessment that relator did not meet his burden to show successful completion of relevant programs.

9. *Any other information relevant to reconsideration*

The commissioner noted that the disqualifying events were recent in the context of the 15-year disqualification period and that "it is too soon to know if [relator has] made long-term changes to [his] behavior to prevent this from occurring again." Because the commissioner denied relator's request for reconsideration within nine months of relator's most recent disqualifying event, its consideration of the recency of the felony is rationally connected to the risk of harm to the residents. Relator's letter from the probation officer, in the context of the five-year probationary sentence, provides limited assurances that he has made those changes. These facts are rationally connected to the commissioner's decision to deny relator's request for reconsideration to set aside the disqualification.

Relator relies on *Johnson v. Commissioner of Health*, 671 N.W.2d 921 (Minn. App. 2003), for the proposition that the commissioner may not rely on conclusory explanations of the risk factors. Relator fails to recognize that *Johnson* applied a prior version of the reconsideration statute. *See id.* (applying Minn. Stat. § 245A.04, subd. 3b(a) (2002), which previously housed the reconsideration factors). After the commissioner’s decision at issue in *Johnson* in January 2003 but before this court’s review in December 2003, the legislature recodified the statute in chapter 245C. 2003 Minn. Laws ch. 15, art. 1, § 22, at 200 (codified at Minn. Stat. § 245C.22). It added language requiring the commissioner to grant “preeminent weight” to the safety of residents, *id.*, and later made explicit that the commissioner may rely on a single factor as dispositive, 2004 Minn. Laws ch. 288, art. 1, § 61, at 1341. As such, *Johnson* is no longer applicable for that proposition to the extent it implies that conclusory language on nonrelevant factors renders the entire decision arbitrary and capricious. Further, we have several relevant factors supported by substantive analysis beyond conclusory language.

In sum, because the commissioner must give preeminent weight to the safety of the residents, and because several relevant factors support the commissioner’s finding, we conclude that its denial of relator’s request to reconsider setting aside the disqualification was neither arbitrary and capricious nor unreasonable and is supported by substantial evidence.

Affirmed.