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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0561**

Dianne Strohmayr,
Relator,

vs.

A&E Care Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 6, 2021
Affirmed
Reilly, Judge**

Department of Employment and Economic Development
File No. 43100995-3

Dianne Strohmayr, North Branch, Minnesota (pro se relator)

Joseph B. Nierenberg, Nierenberg Employment Law, PLLC, Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Gaïtas, Presiding Judge; Reilly, Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Relator challenges the decision of an unemployment-law judge that she is ineligible for unemployment benefits because she quit her employment and no statutory exception applies. We affirm.

FACTS

Relator Dianne Strohmayer quit her job with respondent A&E Care Services (the employer), a healthcare organization. Relator later applied for unemployment benefits through respondent Department of Employment and Economic Development (DEED). DEED determined that relator was eligible for unemployment benefits. The employer appealed DEED's determination of eligibility. The matter proceeded to a hearing before an unemployment-law judge (ULJ). We first summarize the facts based on the testimony presented at the hearing about the circumstances of relator's quit, and we then explain the ULJ's determinations after the hearing.

In April 2020, relator's son passed away. She had previously lost another son a few years earlier. Following the loss of her second son, relator began to experience depression and anxiety, and she felt that she "just couldn't function." The employer approved relator to take a leave of absence from work under the Family Medical Leave Act (FMLA). Relator's FMLA leave began on April 23, 2020, and was to last for 12 weeks. The employer sent relator a letter saying that her leave would end on July 20, 2020, and that she was expected back to work on that date. The employer had limited contact with relator

during her leave of absence, and most communication came from the human resources (HR) manager and relator's supervisor about paperwork needed for the FMLA leave.

On July 16, 2020, during the last week of her FMLA leave, relator sent her supervisor a text saying that she was quitting. Relator's text stated, "I'm suffering with severe depression and anxiety. I feel due to these conditions that I am unable to perform my job duties and daily functions because of it. I will have [the employer's] equipment returned by the end of July 2020." The parties dispute what happened next. Relator's supervisor told the ULJ that she called relator the same day she received the text message and tried to persuade relator not to quit. The supervisor testified that she asked relator if she was sure she wanted to quit and if she needed anything, and she told relator that the employer could work with relator if she needed more time off. According to the supervisor, relator responded that she needed to quit for herself and her grandson, and she told the supervisor that she would find a part-time job closer to home when she was ready to go back to work. Relator, however, told the ULJ that this phone conversation never took place.

Relator admitted that she did not ask the employer for an extension of the leave of absence after the end of the 12-week period. When asked why she did not request more time off, relator responded that she "didn't know that that was possible." Relator explained that she had been told to come back to work on July 20 and was "under the assumption that was it." The HR manager told the ULJ that the employer could have extended relator's leave and allowed her to take more time off. The HR manager also said that the employer kept relator's position open and did not fill the position until January 2021.

After the hearing, the ULJ issued findings of fact and a decision, determining that relator was ineligible for unemployment benefits. The ULJ found more credible the testimony of relator's supervisor and the HR manager, finding that relator's supervisor called relator after receiving relator's text saying she was quitting. In crediting the testimony of the supervisor and the HR manager over relator's testimony, the ULJ reasoned that the supervisor and HR manager "had a clear recollection of events surrounding [relator's] separation from employment," while relator "was grief stricken during the time in question, and her memory of events was less reliable."

The ULJ noted that an applicant who quits employment is ineligible for unemployment benefits unless an exception applies. The ULJ considered two exceptions: a quit for medical necessity and a quit for a good reason caused by the employer. The ULJ determined that the medical-necessity exception did not apply because relator did not request other accommodations before quitting, even though the employer was willing to help her. The ULJ also determined that the good-reason-caused-by-employer exception did not apply because the employer did not change any conditions of relator's employment, and relator admitted that she quit her job because she believed she could not perform her duties. The ULJ concluded that the determination caused an overpayment in unemployment benefits to relator of more than \$15,000.

Relator requested reconsideration of the ULJ's decision. She mainly disputed the ULJ's finding that her supervisor called her after she quit, and she insisted that the employer never discussed additional accommodations with her. The ULJ issued an order affirming the decision. The ULJ determined that a preponderance of the evidence

supported her earlier finding that relator's supervisor contacted relator when she quit and tried to persuade her to stay. The ULJ reasoned that relator "had a very poor recollection of events during her testimony" and that "[t]he ULJ made an appropriate credibility finding as to why [the supervisor's] testimony was accepted over [relator's] statements."

Relator appeals by certiorari.

DECISION

Relator challenges the ULJ's determination that she is ineligible for unemployment benefits. When reviewing the ULJ's decision, we may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2020). Alternatively, we may reverse or modify the ULJ's decision when the relator has been prejudiced because the decision, among other things, is affected by an error of law or not supported by substantial evidence in the record. *Id.*, subd. 7(d)(4)-(5).

We review the ULJ's factual findings in the light most favorable to the decision. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We will not disturb those findings "as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether the ULJ's findings show that the applicant meets a statutory exception to ineligibility for quitting employment is a question of law, which we review de novo. *See Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000) (applying de novo review to determine whether applicant met exception for a quit for good reason caused by employer).

I. The ULJ did not err by crediting the testimony of relator’s supervisor over relator’s testimony.

Relator first argues that the ULJ clearly erred by finding that relator’s supervisor called her and offered to accommodate her after relator texted saying she was quitting. Relator maintains that the ULJ should have credited relator’s testimony that the phone conversation never took place, rather than accepting the testimony of her supervisor.

Given our standard of review on appeal, we cannot reverse the ULJ’s credibility determination. We view the ULJ’s factual findings in the light most favorable to the decision, and we defer to the ULJ’s credibility determinations. *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 355 (Minn. App. 2016). The ULJ explained why she found the supervisor more credible: relator “was grief stricken during the time in question, and her memory of events was less reliable.” While relator disputes that her memory was unclear, we have repeatedly refused to reweigh credibility determinations when the ULJ has given a reasoned explanation for the decision. *See Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (affirming ULJ’s credibility determination when findings were supported by substantial evidence); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (deferring to ULJ’s determination that applicant’s testimony was not credible). We therefore must accept the ULJ’s finding crediting the testimony of relator’s supervisor that she called relator and offered an accommodation.¹

¹ Relator also argues that the ULJ did not fulfill her duty to reasonably assist relator with the presentation of evidence and the proper development of the record. She argues that the ULJ failed to fully develop the record because she did not request a copy of relator’s May 2020 doctor’s letter diagnosing her illness. But the doctor’s letter was not relevant to the ULJ’s decision. Instead, the ULJ based her decision on the circumstances surrounding

II. The ULJ did not err by determining that relator did not meet the medical-necessity exception.

Relator challenges the ULJ's determination that she was ineligible for unemployment benefits because she quit and did not meet the medical-necessity exception.² A person who quits employment is ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2020). Relator argues that she meets the medical-necessity exception. To meet this exception, an applicant must show that she quit her employment "because the applicant's serious illness or injury made it medically necessary that the applicant quit." *Id.*, subd. 1(7). But this exception applies only "if the applicant informs the employer of the medical problem and requests accommodation and no reasonable accommodation is made available." *Id.*

Here, the ULJ determined that relator did not meet this exception because she did not request other accommodations before quitting, even though the employer was willing to grant one. Substantial evidence in the record supports this determination. Shortly before her FMLA leave was to expire, relator texted her supervisor saying she was quitting. Relator acknowledged that she did not request an extension of the leave of absence before quitting, saying that she "didn't know that that was possible." But the HR manager testified that relator could have extended her leave of absence beyond the time allowed under the

relator's quit in July 2020. The record shows that the ULJ properly developed all facts relevant to her decision.

² Relator frames this issue as whether there are "genuine issues of material fact" concerning relator's serious illness. This is the standard for reviewing a grant of summary judgment and does not apply to this case. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 69-70 (Minn. 1997) (explaining summary-judgment standard). Instead, we review whether substantial evidence supports the ULJ's decision. Minn. Stat. § 268.105, subd. 7(d)(5).

FMLA.³ Relator's supervisor testified that she called relator after receiving the text and told her that the employer was willing to work with her if she needed more time off. As explained above, we defer to the ULJ's credibility determination that this conversation between relator and her supervisor took place. The record therefore supports the finding that relator did not request an additional accommodation after her FMLA leave expired, that the employer offered an accommodation after relator said she was quitting, and that relator rejected it and decided to quit anyway. The ULJ did not err by determining that relator did not satisfy all the requirements of the medical-necessity exception.

III. The ULJ did not err by determining that relator did not meet the exception for a quit for a good reason caused by the employer.

Finally, relator argues that the ULJ erred by determining that relator did not meet the exception for a quit because of a good reason caused by the employer under Minn. Stat. § 268.095, subd. 1(1). To satisfy this exception, the applicant's reason for quitting must be one that: (1) is directly related to the employment and for which the employer is responsible, (2) is adverse to the worker, and (3) would compel an average, reasonable worker to quit and become unemployed rather than remain in the employment. *Id.*, subd. 3

³ In her brief, relator states that the employer "was only going to allow 12 weeks under [the] FMLA and nothing else would be provided for accommodation as [relator] failed to furnish a death certificate to prove [relator's] own medical illness." The record does not support this assertion. Relator appears to be basing her argument on a response the employer made in a DEED questionnaire before the hearing. In that response, the employer stated that relator had exhausted 12 weeks of FMLA leave, and it also noted that the employer never received a death certificate for her son even though the employer requested one several times. We do not read this statement as saying that added leave was contingent on relator providing a death certificate. Moreover, the HR manager's testimony at the hearing—which the ULJ credited and which we must accept on appeal—contradicts relator's assertion.

(2020). Relator argues that she meets this exception because she believed that, after her son's death, her continued employment with the employer would harm her physical and mental health.

We note that relator has forfeited this argument because she raises it for the first time on appeal. This court does not consider matters not presented to and considered by the ULJ. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1982); *see also Peterson v. Ne. Bank—Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* in an unemployment-benefits appeal). Nor may a party raise the same issue litigated below but under a different theory. *Thiele*, 425 N.W.2d at 582. Here, the ULJ, in her initial decision, considered whether relator could satisfy the exception that she quit for a good reason caused by the employer. But the ULJ did not consider the particular theory that relator raises on appeal. And in her request for reconsideration, relator did not challenge that part of the ULJ's decision. Because relator failed to raise this argument before the ULJ, the argument is not properly before this court.

Even if we were to consider relator's argument, the record does not support that she would satisfy the good-reason-caused-by-employer exception. The record lacks evidence to support relator's assertions, and it does not show that the employer took any action adverse to her that would compel an average, reasonable worker to quit. Relator cannot show that she quit for a good reason caused by the employer.

For these reasons, the ULJ did not err by determining that relator was not entitled to unemployment benefits because she quit her employment and no statutory exception applies.

Affirmed.