

*This opinion is nonprecedential except as provided by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
A23-1977**

Anne L Doering,
Relator,

vs.

2Care4U South, LLC,
Respondent,

4U Home Health Care South, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 7, 2024
Affirmed
Halbrooks, Judge***

Department of Employment and Economic Development
File Nos. 49774838-3, 49804703-3

Anne Doering, Shakopee, Minnesota (pro se relator)

2Care4U South, LLC, Savage, Minnesota (respondent employer)

4U Home Health Care South, LLC, Savage, Minnesota (respondent employer)

Keri A. Phillips, Katrina Gulstad, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

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

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Relator challenges two decisions by the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits after separating from employment with two respondent-employers. We affirm.

FACTS

Respondent-employers 2Care4U South, LLC and 4U Home Health South, LLC are related businesses that both provide home health-care services for their respective clients. Amy Wahlstrom-McAlister is the CEO of both businesses.

Relator Anne Doering worked for both companies as a registered nurse from February 2022 to July 3, 2023. She worked approximately 25 to 30 hours per week for 2Care4U and approximately ten hours per month for 4U Home Health, earning the same hourly wage at both companies. Doering's job duties included scheduling and performing intakes with new clients; supervising home health aides and personal-care attendants; and visiting clients for wound care, catheter changes, medication setups, and vitals checks. Doering was also required to report to the office to attend weekly meetings, complete paperwork required for state licensing, and provide training and education for home health aides.

On July 3, 2023, Wahlstrom-McAlister told Doering that she was "letting her go," citing performance issues that included tardiness to client visits, tardiness to weekly

in-office meetings, and failure to complete required paperwork on time. Doering asked to continue working, and Wahlstrom-McAlister offered Doering the option to continue working as the primary nurse for two clients, reduced from the approximately ten clients she had previously, subject to the terms of a performance-improvement plan (PIP). Doering's other clients were assigned to another nurse. Doering's two remaining clients received services through 2Care4U; Doering would no longer serve any clients through 4U Home Health. With these changes, Wahlstrom-McAlister also reduced Doering's pay. Doering accepted Wahlstrom-McAlister's offer. Wahlstrom-McAlister drafted a PIP, and Doering signed it. Wahlstrom-McAlister later testified that Doering understood that she would be terminated if she was late to any future meetings or client visits. Later that day, Doering texted Wahlstrom-McAlister, "I do not feel good about what we discussed. I will accept the termination."

Doering applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that she is ineligible for benefits in connection with her separation from 4U Home Health because she was discharged for employment misconduct. DEED also determined that she is ineligible for benefits in connection with her separation from 2Care4U because she quit for a reason that was not a good reason caused by the employer. Doering appealed both determinations, and the matters proceeded to a single hearing before a ULJ.

With respect to timeliness of client visits, Wahlstrom-McAlister testified that Doering was sometimes up to "two to four hours late" and other times did not show up on the scheduled date at all. Wahlstrom-McAlister testified that she received at least 20

complaints from 10 to 15 clients about Doering's tardiness and no-shows and that when clients called her asking where Doering was, Doering did not respond to Wahlstrom-McAlister's attempts to contact her.

Doering testified that she could only recall two complaints, one from a client's father that was unrelated to lateness and one from a fellow employee when Doering was late to an in-home training. When the ULJ asked Doering whether Wahlstrom-McAlister ever talked to her about a client complaining that she was late, Doering testified, "I would need a specific incident." When asked to answer the question in general terms, Doering stated that Wahlstrom-McAlister sometimes told her that clients had complained that she was late but that Wahlstrom-McAlister did not give her specific examples.

Doering estimated that she was 10 to 15 minutes late to approximately five percent of client visits. She did not remember ever being two to four hours late. She also stated that she called clients ahead of time if she was running late and that they were understanding. She stated that if she was going to be an hour late, she would reschedule, but that did not happen very often. When asked if she could have avoided being late, Doering testified that she could have planned visits and managed her time better by scheduling clients according to their location.

With respect to weekly meetings, Wahlstrom-McAlister testified that Doering was 15 to 60 minutes late to nearly every meeting. Doering admitted that she was late to meetings but stated that the meetings were "very casual" and that even when she was 10 to 15 minutes late, the meeting sometimes would not start for another 20 minutes.

Addressing Doering's failure to timely submit paperwork, Wahlstrom-McAlister testified that Doering often failed to complete and turn in the paperwork despite stating that she had done so when she submitted her timecards. The companies' administrative assistant, A.N., testified that she kept a running list of paperwork that was overdue and that she consistently reminded Doering to submit it. Doering testified that as an administrative assistant, A.N. did not understand what paperwork needed to be submitted and when. Doering admitted that she failed to complete some of the paperwork on time because of time constraints and because of her preference for electronic charting but said that did not happen very often.

Wahlstrom-McAlister submitted documentation of five different warnings to the ULJ, one of which was accompanied by a PIP from 2022. The warnings addressed all of the performance issues that Wahlstrom-McAlister claimed were employment misconduct. Wahlstrom-McAlister also noted in the warnings and her testimony that Doering refused to sign them. Doering disputed this testimony, stating that she had never seen the warnings and that Wahlstrom-McAlister had only mentioned these issues in casual verbal conversations. But Doering conceded that in some of those conversations Wahlstrom-McAlister was "actually mad." Doering suggested that the warnings were prepared after her separation but admitted that she refused to sign the PIP in 2022, claiming that it was unreasonable.

Wahlstrom-McAlister also submitted "progress notes," which documented information relevant to clients' medical care, and an email from a DHS nurse manager relaying additional client complaints. The progress notes were drafted by another nurse,

R.D., shortly before and after Doering's separation and describe client complaints about Doering's timeliness, communication, and quality of care. The nurse manager's email describes the same complaints but identifies the subject as an employee named "Sarah."

Before the hearing, Doering requested subpoenas to obtain testimony from the nurse manager and three of the clients identified in R.D.'s progress notes. At the conclusion of the hearing, the ULJ stated that she did "not find it necessary to continue [the] hearing to receive [their] testimony." Doering also submitted an exhibit, the contents of which are not in the record or described in the briefing, that the ULJ excluded because it contained sensitive information.

Following the hearing, the ULJ determined that Doering is ineligible for benefits pursuant to her employment with 4U Home Health because she was discharged for employment misconduct. The ULJ also determined that Doering is ineligible for unemployment benefits pursuant to her employment with 2Care4U because she quit for a reason that was not a good reason caused by 2Care4U; rather, Doering's reason for quitting arose out of her employment misconduct. Doering requested reconsideration of the decisions, and the ULJ denied the request.

This certiorari appeal by Doering follows.

DECISION

Doering presents two overall challenges on appeal. First, she argues that the ULJ failed to conduct a fair and impartial hearing as it relates to the evidence of Doering's employment misconduct. Second, she argues that the ULJ erred by determining that she

did not quit 2Care4U for a good reason, asserting that she did not quit and that she reasonably rejected Wahlstrom-McAlister's offer of continued employment.

When reviewing a ULJ's eligibility determination, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2022).

We review de novo "the ULJ's interpretation of the unemployment statutes and . . . the ultimate question whether an applicant is eligible to receive unemployment benefits." *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015). We review a ULJ's factual findings for whether they are substantially supported by the evidence. *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 (Minn. App. 2018). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 816 n.4 (emphasis and quotation omitted). In reviewing factual findings, we defer to the ULJ's credibility determinations and evaluation of conflicting evidence. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). We review a ULJ's decision to deny an additional evidentiary hearing for an abuse of discretion. *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010).

I. The ULJ conducted a fair and impartial hearing and did not err by determining that Doering engaged in employment misconduct.

Doering presents numerous challenges to the ULJ's development and consideration of the record on the subject of employment misconduct. Whether Doering engaged in employment misconduct underlies both of the ULJ's determinations because the ULJ determined that (1) Doering is ineligible for benefits in connection with her employment with 4U Home Health because she was discharged for employment misconduct and (2) Doering is ineligible for benefits in connection with her employment with 2Care4U because her resignation occurred because of her employment misconduct. *See* Minn. Stat. § 268.095, subds. 1(1), 3(d), 4(1) (2022). "Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Minn. Stat. § 268.095, subd. 6(a) (2022).

At the outset, we note that Doering represented herself at the hearing. "The ULJ is required to assist unrepresented parties in the presentation of evidence, and to control the hearing in order to protect the parties' right to a fair hearing and ensure that relevant facts are clearly and fully developed." *Ntamere v. Decisionone Corp.*, 673 N.W.2d 179, 180 (Minn. App. 2003); *see also* Minn. R. 3310.2921 (2023) ("The unemployment law judge must assist all parties in the presentation of evidence."). "When a party is pro se, the ULJ must help the party to recognize and interpret the parties' claims." *Ntamere*, 673 N.W.2d at 180 (quotation omitted).

Doering first argues that the ULJ’s denial of her request for subpoenas was legally insufficient and arbitrary. The ULJ has authority to subpoena witnesses. Minn. Stat. § 268.188(a) (2022).

The unemployment law judge may issue subpoenas to compel the attendance of witnesses . . . upon a showing of necessity by the requesting party. . . . The requesting party must identify the person . . . to be subpoenaed, the subject matter of the evidence requested, and their necessity. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious.

Minn. R. 3310.2914, subp. 1 (2023). We review a ULJ’s decision to deny a request for a subpoena for an abuse of discretion. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 853 (Minn. App. 2014), *rev. denied* (Minn. July 15, 2014).

Doering asserts that the three clients she sought to subpoena had “firsthand knowledge about the alleged complaints” that appear in R.D.’s progress notes. In her subpoena request, she stated that the clients’ testimony would confirm whether those clients complained to R.D. and, if so, what they told her. She also asserts that the DHS nurse manager she sought to subpoena had “firsthand knowledge about [the] email that was misrepresented as a complaint.” In her subpoena request, she stated that the DHS nurse manager would confirm whether the email was referring to Doering or someone named Sarah.

The ULJ did not abuse her discretion when she decided it was not necessary to receive testimony from witnesses with “firsthand knowledge.” There is ample evidence in the record about client complaints, and the ULJ could have reasonably concluded that

testimony from three of those clients would not undermine a finding that many clients regularly complained. The complaints in the progress notes are detailed and consistent with the other evidence, including Doering's admissions that she was sometimes late and that Wahlstrom-McAlister notified her that this was a problem.

Regarding the nurse manager's testimony, the ULJ accepted Wahlstrom-McAlister's explanation at the hearing that the nurse manager mistakenly used the name Sarah because "Sarah" held Doering's position before Doering was hired and Wahlstrom-McAlister received the email during Doering's employment. The explanation is consistent with the dates of Doering's employment, during which she was the only nurse employed by the companies, and the email describes the same complaints cited throughout the record. We therefore conclude that the ULJ did not abuse her discretion by denying Doering's subpoena requests.

Second, Doering argues that the ULJ failed to assist her in developing the record on the circumstances of the written warnings, placing an "unfair burden of proof" on Doering by asking her why Wahlstrom-McAlister would lie about the warnings. In her request for reconsideration, Doering argued that further testimony from Wahlstrom-McAlister about "why Doering refused to sign [the warnings], why no witness signed them to confirm authenticity, what room they were presented to Doering in, etc." would have revealed that the warnings were falsified.

The ULJ's determinations of ineligibility contain no references to the written warnings. But to the extent that the ULJ may have relied on them, the ULJ found only that Doering's conduct was a serious violation of the employers' reasonable expectations and

that Doering was aware of the expectations. The ULJ stated that these findings were based on Doering's own testimony. Although Doering testified that she never saw the written warnings, Doering also testified more generally that Wahlstrom-McAlister notified her of the issues with her job performance, that she was aware she was expected to be on time, and that she could have improved her timeliness with better planning.

Doering argues that the ULJ should not have relied on her testimony because Doering struggled to recall events and more reliable evidence was available to, but not submitted by, the employers. Because Doering did not raise these arguments to the ULJ in her requests for reconsideration, we decline to consider them. *See Peterson v. Ne. Bank Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (“[B]ecause this issue was not raised before the ULJ, it is not properly before this court on review.”). The ULJ found Doering's testimony about her issues with timeliness credible because her statements were against her own interest. We defer to the ULJ's credibility determinations and discern no clear error with respect to this finding. We therefore conclude that the ULJ did not violate her duty to assist Doering and ensure the relevant facts regarding the warnings were developed and did not abuse her discretion by denying Doering's request for a second evidentiary hearing to take more testimony on that subject.

Doering argues that the evidence shows, and further evidence would support, that R.D. falsified the progress notes because R.D. is biased in favor of the employers, the complaints do not belong in medical records, and other medical records might not corroborate the complaints in the documents. Doering did not make this argument to the ULJ; rather, she argued at the hearing that the notes were irrelevant because they were

written after her separation. Just as a party cannot obtain appellate review of an issue not raised to the ULJ, a party may not “obtain review by raising the same general issue litigated below but under a different theory.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We decline to consider Doering’s remaining arguments because they are not properly before this court.

Doering also contends that the ULJ erred by excluding an exhibit that contained sensitive information. But Doering did not explain in her submissions to the ULJ, and does not explain on appeal, how admitting the exhibit might have changed the outcome of the hearing. Therefore, we do not address this argument. *Peterson*, 805 N.W.2d at 883; *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorit[y] is waived . . . unless prejudicial error is obvious on mere inspection.”).

We conclude that the ULJ conducted a fair and impartial hearing and did not violate her duty to assist Doering in developing the record. Doering makes no further argument that the record does not support the ULJ’s determination that her conduct met the definition of employment misconduct. A review of the record supports the ULJ’s determination.

Doering does not present any other challenges to the ULJ’s first determination, that she was terminated from 4U Home Health for employment misconduct. We discern no error in that determination and therefore affirm the ULJ’s decision that Doering is ineligible for unemployment benefits in connection with her employment with 4U Home Health. We also affirm the ULJ’s finding that Doering committed employment misconduct as it relates

to the ULJ's second determination and proceed to Doering's argument that she quit employment with 2Care4U for a good reason.

II. The ULJ did not err by determining that Doering quit 2Care4U for a reason that was not a good reason caused by the employer.

Doering challenges the ULJ's determination that she quit her employment with 2Care4U for a reason that was not a good reason caused by 2Care4U, arguing that she did not quit and that she reasonably rejected Wahlstrom-McAlister's offer to continue working under the PIP with fewer hours and lower pay.

An applicant who voluntarily quits their employment is ineligible for unemployment benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2022). One exception is when the applicant quits "because of a good reason caused by the employer." *Id.*, subd. 1(1). "Whether an employee has been discharged or voluntarily quit is a question of fact." *Nichols*, 720 N.W.2d at 594 (quotation omitted). Therefore, we review a ULJ's finding that an applicant quit for whether that finding is "substantially supported by the evidence." *Id.*

"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) (2022). "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." Minn. Stat. § 268.095, subd. 5(a) (2022). The ULJ found that Doering quit her employment with 2Care4U when she sent the text message that she would "accept the termination."

Doering asserts that she was discharged from 2Care4U, and did not quit, because her employment ended when Wahlstrom-McAlister notified her that she was being let go at the beginning of the July 3, 2023 meeting—not when Doering sent Wahlstrom-McAlister the text message that she would accept the termination. Doering cites the provision in the statute that states, “An applicant may not be held ineligible for unemployment benefits under this section for any acts or omissions occurring after the applicant’s separation from employment with the employer.” Minn. Stat. § 268.095, subd. 7 (2022). Doering appears to argue that, because she was terminated at the beginning of the July 3, 2023 conversation with Wahlstrom-McAlister, the ULJ should not have considered Wahlstrom-McAlister’s subsequent offer of alternative employment or Doering’s decisions first to accept and subsequently to reject the offer.

Doering’s reliance on Minn. Stat. § 268.095, subd. 7 is misplaced. The statute states that the ULJ may not consider “acts or omissions occurring *after* the applicant’s separation from employment.” *Id.* (emphasis added). The ULJ found that the separation occurred when Doering sent the text message because, after considering testimony and evidence about the full July 3, 2023 conversation and Doering’s text message, those events occurred before and at the time of Doering’s separation. The ULJ’s finding that Doering was still employed until she sent the text message is supported by substantial evidence, including Doering’s own testimony that she understood she could continue working for 2Care4U under the PIP if she wanted to do so. We therefore conclude that the ULJ did not consider any evidence that should have been excluded and did not err by determining that Doering quit 2Care4U.

Next, Doering asserts that she reasonably rejected Wahlstrom-McAlister's offer of continued employment under the PIP with reduced hours and pay. Whether an applicant's reason for quitting constitutes a good reason caused by the employer is a question of law that we review de novo; the ULJ's conclusion must be based on factual findings that are supported by substantial evidence in the record. *Thao v. Command Ctr., Inc.*, 824 N.W.2d 1, 4 (Minn. App. 2012). A good reason caused by the employer is defined exclusively by statute. Minn. Stat. § 268.095, subd. 3(g) (2022). The statute defines good reason as follows:

A good reason caused by the employer for quitting is a reason:

- (1) that is directly related to the employment and for which the employer is responsible;
- (2) that is adverse to the worker; and
- (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Id., subd. 3(a) (2022). “A reason for quitting employment is not a good reason caused by the employer for quitting if the reason for quitting occurred because of the applicant's employment misconduct.” *Id.*, subd. 3(d).

The ULJ determined that the reason for Doering's demotion and subsequent resignation arose out of Doering's employment misconduct. Wahlstrom-McAlister initially communicated her intent to discharge Doering because of Doering's performance deficiencies. Then, when Doering asked to continue working, Wahlstrom-McAlister agreed, with the condition that Doering improve her performance pursuant to the terms of the PIP. We therefore conclude that the ULJ's finding that Doering's reason for quitting

arose out of her employment misconduct is supported by substantial evidence. And because Doering's reason for quitting occurred because of her employment misconduct, the ULJ did not abuse its discretion by determining that Doering quit for a reason that was not a good reason caused by the employer. We therefore affirm the ULJ's decision that Doering is not eligible for unemployment benefits in connection with her employment with 2Care4U.

Affirmed.