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*Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1186**

James Boyer,
Relator,

vs.

RFS, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 25, 2010**
**Affirmed**
**Lansing, Judge**

Department of Employment and Economic Development
File No. 21819413-3

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James F. Boyer, Maplewood, Minnesota (pro se relator)

RFS. LLC, Minot, North Dakota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

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Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and Connolly, Judge.

## U N P U B L I S H E D  O P I N I O N

**LANSING**, Judge

James Boyer appeals, by writ of certiorari, an unemployment law judge's determination that he is ineligible for unemployment benefits. Because we conclude that substantial evidence supports the determination that Boyer quit his employment and that no exception to ineligibility applies, we affirm.

## F A C T S

RFS, LLC is a North Dakota company that installs water sprinklers. On November 3, 2008, RFS employed James Boyer to install sprinklers for clients in North Dakota and Montana. Boyer, who lives in Maplewood, had previously worked for RFS. RFS allowed Boyer a Thanksgiving holiday that extended from November 20 to December 2. Boyer returned to work on December 2 and continued working through December 20, when he returned to Minnesota for the Christmas holiday. Following the Christmas holiday, Boyer did not return to work for RFS. He remained in Minnesota and looked for work in the Twin Cities.

Boyer applied for unemployment benefits beginning the week of December 21, 2008. The Minnesota Department of Employment and Economic Development determined that Boyer was ineligible because he quit his job with RFS and none of the exceptions to ineligibility applied.

Following Boyer's appeal, an unemployment law judge (ULJ) held a hearing. The hearing record included a document submitted by RFS in January 2009, stating that RFS had expected Boyer to return and that it had work for him. Both the president and the

office manager for RFS testified at the hearing and confirmed details of Boyer's employment. They said that Boyer received an extended Thanksgiving break because of the long distance between his home and his work. Boyer testified and similarly described his two work segments in November and December and the two holiday breaks. He said that he did not return to work for RFS after the Christmas holiday because his wife was not in good health, and he did not want to leave her alone during his out-of-state absences.

The ULJ concluded that Boyer was ineligible for benefits. The findings state that Boyer was employed by RFS from November 3 through December 20, 2008. The ULJ further found that Boyer quit on December 20, because "it was too much of [a] hardship on his family to return to RFS." Concluding that these reasons were personal and not caused by RFS, the ULJ determined that Boyer's decision to end his employment was not for a good reason caused by RFS. The ULJ specifically found that Boyer's Thanksgiving holiday "was not a separation from employment and a rehire," and that he therefore "did not quit his job within [thirty] calendar days of beginning his employment with RFS."

Following the ULJ's determination, Boyer sought reconsideration. He provided a letter from RFS stating that Boyer's November work segment was temporary and that he was "rehired" when he came back in December. The ULJ noted that RFS's newly submitted statement that divided Boyer's work into a "temporary" segment and a "rehiring" segment conflicted with RFS's testimony at the hearing that described the November break as a holiday rather than an employment termination. The ULJ stated that the hearing record contained no evidence to support Boyer's claim of a temporary

job with a rehire and affirmed the initial decision as "factually and legally correct." Boyer appeals by writ of certiorari.

## D E C I S I O N

We review a ULJ's decision on eligibility for unemployment benefits to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008).

### I

An employee who quits employment is ordinarily ineligible for benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1 (2008). An employee quits employment "when the decision to end the employment was, at the time the employment ended, the employee's." Minn. Stat. § 268.095, subd. 2(a) (2008). Whether an employee quit or was discharged is a question of fact for the decision-maker. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003).

The ULJ determined that Boyer quit on December 20 because his decision not to return to work with RFS was a decision that Boyer made, on his own, for personal reasons. Substantial evidence supports the ULJ's conclusion. Documentation from RFS states that work was available for Boyer in January, and RFS expected Boyer to return. Nothing in the record suggests that RFS took any steps to terminate Boyer's employment. Boyer's own testimony supports the conclusion that he made the decision not to continue his employment because "[It] turned out to be kind of a hardship for me and my wife. . . . [S]he needed me at home."

Because it was Boyer's decision to end his employment with RFS, he is ineligible for benefits unless an exception applies. Minn. Stat. § 268.095, subd. 1. In the material submitted on appeal, Boyer contends that the exception to ineligibility that applies to him is that he "quit the employment within [thirty] calendar days of beginning the employment because the employment was unsuitable for the applicant." *Id.*, subd. 1(3). One apparent purpose for this exception is to allow an applicant who loses a job to attempt employment of a different nature or with different requirements from his or her prior work. *See Valenty v. Med. Concepts Dev., Inc.*, 503 N.W.2d 131, 134-35 (Minn. 1993) (reasoning that it is against public policy to disqualify from receiving unemployment benefits, people who temporarily try jobs that may be unsuitable); *see also* 1997 Minn. Laws ch. 66 § 43 (adding thirty-day exception to unemployment benefits statute). For two reasons, we conclude that this exception does not apply.

First, the evidence does not support Boyer's claim that he quit within thirty days of beginning his employment with RFS. It is undisputed that Boyer ended his employment on December 20, 2008. Boyer argues that he had two separate employment segments—a temporary segment in November and a rehire in December. The ULJ concluded, however, that "the employment" at issue is all of Boyer's work with RFS, beginning November 3 and continuing through December 20, with a break for Thanksgiving.

The ULJ's characterization of Boyer's employment is supported by substantial evidence. In documentation RFS submitted to DEED, Boyer's start date is listed as November 3, 2008. At the hearing, the representative from RFS stated that Boyer's start

date was November 3 and his end date was December 20. Boyer and the RFS witnesses also testified that Boyer's November return to Minnesota was for the Thanksgiving holiday, not because his job had ended. Nothing in the record suggests that the periods of work in November and December involved two distinct segments, each with a defined beginning and end.

Second, Boyer has not shown that the work with RFS was unsuitable. Although distance from an employee's home is a relevant consideration, it is not the only consideration. *See generally*, Minn. Stat. § 268.035, subd. 23a(a)-(b) (2008) (defining suitable employment). The record shows that Boyer was not able to find work in the Twin Cities, and that he was otherwise satisfied with the RFS work and its wages. Boyer's testimony suggests that distance was a problem only because of his wife's health condition. Because this circumstance is personal rather than work-related, it is not part of the unsuitability determination. *See id.* (specifying suitability considerations based on nature of work). Boyer started suitable work with RFS in November and did not quit within thirty days of beginning work.

We note that the *current* version of section 268.095 provides an ineligibility exception for those who quit work "in order to provide necessary care because of the illness, injury, or disability of an immediate family member." Minn. Stat. § 256.095, subd. 1(7) (Supp. 2009). This provision was added in 2009, and took effect after Boyer's separation from work and after the department determined Boyer's ineligibility. *See* 2009 Minn. Laws ch. 15, § 8 (making new provision effective in determinations made after August 2, 2009). Although the record is not sufficiently developed to establish that

the exception would control, its effective date excludes Boyer from relying on this as an exception to ineligibility. The 2008 statute that applies to Boyer's claim, permits an exception for illness *only* when the illness causing the quit is an illness of the employee himself or herself. *See* Minn. Stat. § 268.095, subd. 1(7) (setting out exception based on "applicant's serious illness or injury").

**II**

The remaining issue is whether it was an abuse of the ULJ's discretion to deny Boyer's request for reconsideration. The request relied on the letter from RFS supporting Boyer's characterization of the November and December work as two separate segments of employment.

The ULJ specifically found that the later-submitted statement was not credible because the representatives from RFS testified differently at the hearing. Because the ULJ provided a logical and reasonable basis for crediting the hearing testimony and rejecting the later-submitted statement, the ULJ's denial of reconsideration is entitled to deference. *See* Minn. Stat. § 268.105, subd. 1(c) (2008) (stating that ULJ must set out reasons for credibility determination significantly affecting outcome); *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that reviewing courts defer to ULJ credibility determination). For the reasons stated in section I of this opinion and because the ULJ explicitly did not accept the later-submitted statement by RFS as credible, the ULJ's determination to affirm its initial decision without an additional hearing was not an abuse of discretion.

**Affirmed.**