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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0024**

Steven M. Lee,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed February 26, 2008
Reversed and remanded
Klaphake, Judge**

Department of Employment and Economic Development
File No. 13145 06

Steven M. Lee, 9568-275th Avenue N.E., North Branch, MN 55056 (pro se relator)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, 1st
National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351
(for respondent)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In his pro se appeal, relator Steven M. Lee challenges the determination of the
unemployment law judge (ULJ) for respondent Minnesota Department of Employment
and Economic Development affirming his earlier decision that (1) Lee did not have good

cause to fail to file bi-weekly requests for unemployment benefits for the period of October 2, 2005, through April 22, 2006, and (2) because Lee did not “actively seek[] suitable employment,” he was ineligible for unemployment benefits for that period. Recent legislation renders the first issue—failure to file bi-weekly requests for benefits—moot. With respect to the remaining issue, because we conclude that the ULJ acted arbitrarily by failing to rule on Lee’s request for an additional evidentiary hearing, we reverse and remand.

D E C I S I O N

The construction of statutes governing eligibility and disqualification for unemployment benefits is a question of law. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). This court reviews a ULJ’s findings in the light most favorable to the decision as long as there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). In reviewing a determination of an applicant’s eligibility for benefits, this court should uphold the ULJ’s determination if it is reasonably supported by the evidence. *See Lolling*, 545 N.W.2d at 377. If the ULJ’s decision is “arbitrary or capricious,” this court may reverse or remand for further proceedings. Minn. Stat. § 268.105, subd 7(d) (2006).

1. Recent Amendment to Unemployment Insurance Statute

Lee first challenges the ULJ’s determination that he was ineligible for unemployment benefits because he did not file continued bi-weekly requests for unemployment benefits and did not have good cause for failing to do so. Enactment of new legislation renders this first issue moot.

An appellate court will hear only live controversies and will not decide a matter only to set precedent. *In re Inspection of Minn. Auto. Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984). Further, “[i]f, pending an appeal, an event occurs which makes a decision on the merits unnecessary or an award of effective relief impossible, the issue will be dismissed as moot.” *Id.*

The legislation at issue provides as follows:

Notwithstanding the requirements of Minnesota Statutes, sections 268.085, subdivision 1, clause (1), and 268.086, the commissioner must accept continued requests for unemployment benefits and pay unemployment benefits to an applicant who:

(1) was employed as a technician or inspector for Northwest Airlines, Inc., prior to August 20, 2005;

(2) stopped working on or about August 20, 2005, because of a labor dispute between the Aircraft Mechanics Fraternal Association (AMFA) and Northwest Airlines, Inc;

(3) did not file continued requests for unemployment benefits within the time periods required under Minnesota Statutes, section 268.086; and

(4) meets all the other requirements for the payment of unemployment benefits under Minnesota Statutes, section 268.069, subdivision 2.

2007 Minn. Laws ch. 128, art. 8.

Under this amendment, the legislature waived the reporting requirement for those in Lee’s position, so that issue is moot. We must then determine whether Lee met other requirements for receiving unemployment benefits.

2. *Additional Evidentiary Hearing*

The ULJ alternatively concluded that Lee was ineligible to receive unemployment benefits because he was not actively seeking employment as required by statute. *See* Minn. Stat. § 268.085, subd. 4 (2006). In his pro se brief, Lee essentially makes three arguments regarding this finding: (1) the ULJ improperly found that he was not actively seeking suitable employment; (2) the ULJ did not properly assist him during the hearing by failing to question him about the specifics of his job search and instead the ULJ confused him with his line of questioning; and (3) the ULJ should have remanded for an additional evidentiary hearing based on new evidence Lee submitted in his request for reconsideration. We agree with Lee's third contention.

In conducting a hearing, a ULJ has a duty to exercise control over the hearing procedure to ensure the parties' rights to a fair hearing. Minn. R. 3310.2921 (2005). A ULJ is specifically required to "assist unrepresented parties in the presentation of evidence," and "ensure that relevant facts are clearly and fully developed." *Id.*

Here, during the telephone hearing, the ULJ focused primarily on questions regarding Lee's duty to file bi-weekly requests for benefits. Toward the end of the hearing, the ULJ asked several questions regarding Lee's search for work, but Lee contends he was confused as to what the ULJ was asking:

Q: Were you looking for employment during that period of time[?]

A: No, I was, when I left I don't know how much you want to hear from me but when I walked out the door at Northwest and they recoded all the badge readers, when I left there I knew I would never be back there.

Q: Okay, I'm not asking about going back to Northwest now. Were you doing anything to look for other employment[?]

A: Well what I was going to tell you is I was working on my business which I got into excavating and trucking, that's what I did during the winter. So if you call that looking for work I was developing my business so I could work when the snow went.

Q: Were you doing anything at all during the period from October through April to look for other employment with an employer other than yourself.

A: Just around town, if anybody, I mean everybody knew I needed a job but there [were] no jobs available.

Q: Did you have any earnings of any type during the period from October through April.

A: Zero.

Q: Is there anything else that you want to tell me that we haven't fully discussed yet[?]

A: Not that I can think of.

Lee claims that the ULJ's questions confused him by cutting him off from his answer and that the ULJ "failed to seek the truth . . . by not asking me any questions about where and [with whom] I had sought employment." Notably, nothing in the record indicates Lee was informed that he was required to prove that he was actively seeking employment by providing specific instances of jobs for which he applied.

In his request for reconsideration, Lee attempted to present additional evidence to substantiate his claim that he was actively seeking employment. He listed companies at which he had applied for employment or made inquiries but was rejected because of his specialized licensing qualification; he also listed an employer whose suitable offer he rejected because it required him to relocate to another state. The ULJ denied Lee's request for reconsideration, without any reference to the additional evidence offered by

him, stating only that “[t]he finding that Lee was not actively seeking employment was based on his own sworn testimony.”

While the record shows that the ULJ encouraged Lee to make any statements he wished at the hearing, he apparently did not understand Lee’s confusion. Had the ULJ asked Lee to provide specific instances regarding his job search, the relevant facts would have been more accurately developed. *See* Minn. R. 3310.2921; *see also Thompson v. County of Hennepin*, 660 N.W.2d 157, 160-61 (Minn. App. 2003) (ruling that commissioner’s representative erred in not remanding case for additional evidence to develop a complete record where relator was “not accorded an opportunity to present evidence in her favor”).

We hold as dispositive, however, the ULJ’s decision to deny Lee’s request for reconsideration, which is more aptly characterized as a request for an additional evidentiary hearing. When parties are unrepresented by counsel, a ULJ has “the obligation to recognize and interpret the parties’ claims.” *Miller v. Int’l Express Corp.*, 495 N.W.2d 616, 618 (Minn. App. 1993). This court has recognized that ULJs must “be especially careful to insure fairness to all persons bringing grievances” before the department, noting “the unemployment compensation statutes are remedial and humanitarian in nature.” *Id.* (quotation omitted); *see Hendrickson v. Northfield Cleaners*, 295 N.W.2d 384, 385 (Minn. 1980); *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721,724 (Minn. App. 1991).

Minn. Stat. § 268.105, subd. 2(c) (2006), mandates that a ULJ order an additional evidentiary hearing if new evidence “would likely change the outcome of the decision

and there was good cause for not having previously submitted that evidence[.]” We review a ULJ’s decision to deny a request for an additional evidentiary hearing for abuse of discretion. *Ywswf v. Teleplan Wireless Ser., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007 (citing *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (stating that ULJ’s decision not to hold additional hearing reversed only for abuse of discretion)). Because the detailed new evidence Lee sought to submit supports his claim that he was actively seeking employment during the time in question, presentation of that evidence would likely have changed the conclusion reached by the ULJ.¹

The record also demonstrates that Lee had “good cause” for his failure to submit the evidence earlier. As a case involving the unique circumstances faced by Northwest mechanics, the main focus of Lee’s unemployment hearing was on the reporting requirement and not on full development of other eligibility requirements. The notice provided to Lee by respondent stated that he was denied benefits because he failed to file bi-weekly requests for benefits. Nothing in the record indicates that Lee was notified that he was required to prove that he was actively seeking employment by enumerating specific efforts he made to find work. Minn. R. 3310.2921 (ULJ must inform parties of their burdens of proof); *see* Minn. Stat. § 268.105, subd. (1)(a) (department must send notice that the parties have certain “responsibilities” regarding the hearing). Rather, the notice referred to Lee’s ineligibility based on his failure to report. This lack of directive

¹ This court may consider this new evidence for the limited purpose of deciding whether to remand to an ULJ for a further evidentiary hearing. Minn. Stat § 268.105, subd. 2(c) (2006).

may explain Lee's confusion during the hearing and his failure to establish his efforts to actively seek employment.

The importance of providing a full and fair hearing and of developing a complete record weighs in favor of remanding this case for an additional evidentiary hearing. This is especially true because Lee is entitled "to receive unemployment benefits for any week" he can show he was actively seeking employment. Minn. Stat. § 268.085, subd. 1 (2006). We therefore conclude that the ULJ erroneously denied Lee's request for reconsideration and that its decision was arbitrary and capricious within the meaning of Minn. Stat. § 268.105, subd. 7(d).

Because the statutory requirements that the evidence would "likely change the outcome" and that there was "good cause" for not producing the evidence at relator's unemployment hearing have been met, we reverse and remand for an additional evidentiary hearing with respect to whether relator was "actively seeking suitable employment."

Reversed and remanded.