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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1404**

Matthew J. Janzen,
Relator,

vs.

Department of Employment
and Economic Development,
Respondent.

**Filed June 9, 2009
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 20561385-4

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Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and
Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator Matthew Janzen challenges an unemployment law judge's (ULJ) determination that he is ineligible to receive unemployment benefits because he did not meet the requirement under Minn. Stat. § 268.085, subd. 15 (Supp. 2007), that the applicant be available for suitable employment. Because the determination is supported by the evidence and the ULJ lawfully stated his reason for discrediting relator's testimony that he is willing to quit school to accept suitable employment, we affirm.

FACTS

Relator applied to the Department of Employment and Economic Development for unemployment benefits when his part-time, bartending position at the Canyon Grill was terminated in January 2008. In his initial application, he stated that he was enrolled at the University of Minnesota, that he attended school Monday through Friday from 8:00 a.m. to 4:00 p.m., that his schooling did not affect his ability to seek or accept a job, and that he was seeking work as a bartender. But he stated that he would not be willing to quit school for a job that interfered or conflicted with his school schedule, because he had "invested a lot of time and money into [his] education and [was] not willing to throw all that away." Relator's application was denied on February 11, 2008, emphasizing that he was not available for suitable employment. "[A] student must be willing to quit school to accept suitable employment." Minn. Stat. § 268.085, subd. 15(b).

After receiving notice of the determination, relator called the department on February 22 to make an "official statement" that he had changed his mind and "would be

willing to quit school for work.” The record indicates that relator started receiving benefits after this phone call.

On May 15, 2008, a second determination was issued stating that relator was ineligible for benefits. Relator appealed, arguing that he became eligible for unemployment benefits on February 22 when he called the department to formally change his status.

A hearing was held on June 11, 2008. Relator testified that he had been a student at the University of Minnesota since September 2007 and that his tuition was approximately \$5,000 per semester. He indicated that he needed to earn money because his parents had loaned him money to pay for his schooling, and they expected him to pay them back within a reasonable time so that they could stay within their own budget. Relator acknowledged that when he first applied for benefits he said he would not be willing to quit school to accept suitable employment. But he said he later changed his mind because he realized that it was more difficult to find suitable employment than he originally anticipated. He told the ULJ that he informed the department of his changed circumstances on February 22 and that he continued looking for jobs involving bartending, bar-backing, and serving. As of the time of the hearing, he had acquired two jobs. He was working about fifteen hours a week at a “downtown bartending job” and was working about thirty hours a week at a “restaurant job.” Relator said he planned to “scale back” his work schedule when he returned to school in the fall.

Following the hearing, the ULJ determined that relator was not available for suitable employment as required by Minn. Stat. § 268.085, subs. 1, 15, and was

therefore ineligible for unemployment benefits “from January 27, 2008, the effective date of his account, and continuing until conditions change.” Relator filed a request for reconsideration, and the ULJ affirmed the initial determination.

D E C I S I O N

Relator challenges the ULJ’s eligibility determination. “‘Available for suitable employment’ means an applicant is ready and willing to accept suitable employment in the labor market area” and that the applicant is genuinely attached to the work force. *Id.*, subd. 15(a). An additional criterion exists for student applicants: “To be considered ‘available for suitable employment,’ a student must be willing to quit school to accept suitable employment.” *Id.*, subd. 15(b).

We may overturn or modify a ULJ’s decision only if the findings, inferences, or conclusions violate constitutional provisions, exceed statutory authority or the department’s jurisdiction, are made on unlawful procedure, are affected by error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (Supp. 2007). We defer to the factfinder’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (Supp. 2007).

Relator stated in his initial application for benefits that he would not be willing to quit school for a job that interfered or conflicted with his school schedule because he had

“invested a lot of time and money into [his] education and [was] not willing to throw all that away.” At his hearing he testified that he changed his mind and, as of February 22, 2008, was willing to quit school to accept suitable employment. Relator also submitted his notice of appeal as an exhibit, which stated that he originally thought that finding a job would be easy and that he changed his mind about his willingness to quit school because he realized that, if he did not “start making money,” he would be unable to afford tuition.

The evidence presented the ULJ with a credibility question. The ULJ could have believed relator’s evidence indicating that he changed his mind, but the record permitted the ULJ to prefer the circumstantial evidence indicating that relator’s original application represented his actual state of mind. The record shows relator’s original statement that he was not willing to quit school, and it is undisputed that he changed this statement after he was denied benefits.

The ULJ found that the circumstantial evidence that relator did not actually change his mind was more credible than relator’s evidence that he had. The ULJ stated:

[Relator] indicated when he applied for benefits that he was not willing to quit . . . school to accept a suitable job. Although [relator] later indicated that he would be willing to quit school, it was after he had been held ineligible for benefits. [Relator’s] answer when he initially applied for benefits is likely more accurate.

These findings demonstrate that the ULJ did not find relator’s testimony credible. The determination satisfies, albeit minimally, the requirement under Minn. Stat. § 268.105, subd. 1(c), that the ULJ “set out the reason for crediting or discrediting . . . testimony.”

See Ywswf v. Teleplan Wireless Servs., Inc., 726 N.W.2d 525, 532-33 (Minn. App. 2007) (noting that reasons for crediting testimony include whether witness will “gain or lose if this case is decided a certain way” and whether testimony is “reasonable compared with other evidence”).

Although relator’s testimony, if believed, would have supported a determination of eligibility, the ULJ lawfully found that the testimony was not credible. On appeal, we are to defer to the ULJ’s credibility determinations and will not reweigh the evidence. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (declining to reweigh evidence), *review denied* (Minn. Mar. 30, 2004); *see Skarhus*, 721 N.W.2d at 344 (deferring to credibility determination).

Affirmed.