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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0273**

Maimouna Diallo,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed October 22, 2012  
Affirmed  
Connolly, Judge**

Department of Employment and Economic Development  
File No. 28885356-5

Maimouna Diallo, Blaine, Minnesota (pro se relator)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and  
Ross, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she is  
ineligible for unemployment benefits because she was not available for and seeking  
suitable employment. Because relator was ineligible for unemployment benefits from the

time she began receiving social security benefits until she provided a medical statement of the reason for her disability and her availability for work, we affirm.

## FACTS

Relator Maimouna Diallo worked as a teaching assistant or teacher for about ten years prior to her separation from her employment in August 2010. After she established an unemployment benefit account with the Minnesota Department of Employment and Economic Development (DEED), it concluded that she was eligible, and she began receiving payments of about \$320 weekly.<sup>1</sup>

Relator also applied for social security disability payments and began receiving \$1,051 monthly in February 2011.<sup>2</sup> DEED then sent her a questionnaire. In response to the questions, relator stated that, due to her disabilities of polio, lung disease, colitis, and scleroderma, she was unable to work from September 27, 2011, to December 28, 2011. She also stated that: (1) her disability restricted her from performing some of the tasks of her usual occupation, (2) she was not seeking work in her usual occupation, and (3) she was not able and willing to perform work other than her usual occupation. She answered, “What are your plans for finding employment?” with “Because my condition is worsening at this time,<sup>3</sup> I do not think any employer can even look at me when they see. I was working for many years while having these conditions, but it is hard to do a simple

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<sup>1</sup> The record does not specify the amount of relator’s weekly benefit, but does indicate that she was overpaid \$15,080 for 47 weeks ( $\$15,080 \div 47 = \$320$ ).

<sup>2</sup> A monthly payment of \$1,051 equates to \$12,612 per year ( $12 \times \$1,051$ ), or \$242.55 per week ( $\$12,612 \div 52$ ).

<sup>3</sup> There is no date on the questionnaire, and the record does not indicate when relator filled it out.

task now,” and “At this time I would like to improve my health, therefore I cannot find a job until my health improve[s].” Relator left blank the section on the questionnaire that asked her to list her efforts to find employment from September 1, 2010, to September 27, 2011.

After receiving relator’s questionnaire, DEED found that she “[was] not eligible for benefits beginning 02/06/2011 and until [she] is able to perform some gainful employment, and is ready and willing to seek and accept a job.” DEED concluded that relator had been overpaid \$15,080.

DEED also sent relator a medical statement and told her that the determination of her ineligibility could be reconsidered when the statement was completed and signed by a physician or physician’s assistant. Relator’s physician signed the form, saying that she could not lift over ten pounds or walk longer than five minutes, but was “cleared to do sedentary work,” and sent it to relator.

Relator challenged the determination of her ineligibility. In a telephone hearing, she told the ULJ that she separated from her employment because her limited teaching license had expired and she had to take a test in order to get a full license. She said she spent an hour or two a day looking for work three or four times a week and named four employers to whom she had applied. When asked if she looked for a job for four hours per week, she answered, “Yeah.” She explained that she was not applying for teaching jobs because she cannot get a teaching job until she has a full license.

The ULJ concluded that relator’s medical problems made her unavailable for work only between September 27, 2011, and December 12, 2011; she was not unavailable from

February 6, 2011, to September 26, 2011, or after December 13, 2011. The ULJ also concluded that, from February 6, 2011, “until conditions change,” relator “was not actively seeking suitable employment” and was not “available for suitable employment because she was receiving Social Security disability benefits.” *See* Minn. Stat. § 268.085, subd. 4(c) (2010) (providing that an applicant who is receiving social security disability benefits in a given week “must be determined unavailable for suitable employment for that week”). The ULJ noted an exception to this statute for an applicant who provides a statement from a health care professional who is aware of the applicant’s social security disability claim and of the basis for that claim and certifies that the applicant is available for suitable employment. *See* Minn. Stat. § 268.085, subd. 4(c)(2). The ULJ suggested that relator include such a statement with her request for reconsideration.

Relator requested reconsideration and submitted the medical statement as well as proof of her increased efforts to find a job. The ULJ affirmed the determination that relator was not eligible for benefits from February 6, 2011, to December 22, 2011, because she was not actively seeking employment during that period but noted that relator’s conditions had changed and that, if all other conditions were met, she was eligible for benefits as of January 1, 2012. Relator challenges the determination that she was not eligible for benefits from February 6, 2011, to December 22, 2011.

## **D E C I S I O N**

“[T]he determination of whether an employee was properly disqualified from receipt of unemployment compensation benefits is a question of law on which [appellate

courts] are free to exercise [their] independent judgment.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

To be eligible for unemployment benefits, an applicant must be available for suitable employment and actively seeking suitable employment. Minn. Stat. § 268.085, subd. 1 (2010). “‘Actively seeking suitable employment’ means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area.” Minn. Stat. § 268.085, subd. 16(a) (2010). The answers relator put on her questionnaire and her testimony at the hearing showed that she was not actively seeking employment; she spent only four hours a week doing so. *See Monson v. Minn. Dep’t. of Emp’t Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (relator who testified that he researched a data bank for employment opportunities, regularly consulted professional journals and newspaper employment notices, and applied for two or three positions, but did not pursue positions offering a salary he deemed insufficient, was not actively seeking work); *McNeilly v. Dep’t of Emp’t and Econ. Dev.*, 778 N.W.2d 707, 712 (Minn. App. 2010) (relator who testified that he “asked around for work” but did not apply for any positions during his off season was not actively seeking employment); *James v. Comm’r of Econ. Sec.*, 354 N.W.2d 840, 841-42 (Minn. App. 1984) (relator who, during a three-week period, made phone contact with four employers and visited the job service office twice was not actively seeking suitable employment), *review denied* (Minn. Dec. 30, 1984). The fact that relator was receiving social security disability payments indicated that she was not available for suitable employment. *See* Minn. Stat. § 268.085, subd. 4(c). Thus, the

ULJ's decision accurately reflects the law. Relator was not eligible for benefits from February 6, 2011, to December 22, 2011.

**Affirmed.**