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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1859**

Thomas Ohlson,
Relator,

vs.

General Drivers Local No. 120,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 15, 2013
Affirmed
Hooten, Judge**

Department of Employment and Economic Development
File No. 29771792-3

Thomas E. Ohlson, Scandia, Minnesota (pro se relator)

Martin J. Costello, Hughes & Costello, St. Paul, Minnesota (for respondent employer)

Colleen Timmer, Lee B. Nelson, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Kalitowski, Presiding Judge; Hooten, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Relator challenges the decision of an unemployment law judge (ULJ) that he has not actively sought suitable employment. Relator argues that the ULJ erroneously relied on his failure to accept an available position and his failure to seek employment outside of his previous occupation. Because the ULJ based the underlying factual findings on substantial evidence and did not err in applying the law, we affirm.

FACTS

Relator Thomas Ohlson worked as a truck driver and dock worker for Roadway Express, which became Yellow Road Corporation (YRC), until November 1995, when he was elected as a business agent for General Drivers Local No. 120 (the union). As a business agent, relator was responsible for negotiating contracts, processing grievances, handling arbitrations, and helping members of the union with labor issues. Relator's pay with the union was based on what he would have earned as a driver for YRC, so he was paid \$24.56 per hour for 40 hours per week, was guaranteed 20 hours of overtime at time-and-a-half per week, and was given about \$225 per week for transportation because he used his personal vehicle for work-related travel. This resulted in total annual compensation of about \$114,000 in wages and benefits. Relator was also entitled to a pension that would be available at age 57. Pursuant to the contract governing relator's employment with YRC, and under which he was elected to the business agent position, his seniority was retained during his time as a business agent and he was guaranteed to be able to return to his prior position at YRC if he ever ceased to be a business agent.

In December 2011, relator lost an election for the business agent position, and his employment with the union was thus terminated contemporaneously. Relator exercised his option to return to a truck driving position with YRC, in which relator would earn the same pay per hour as at the union and would receive several other benefits. However, he would not be guaranteed overtime, would not receive a travel allowance, and would not be eligible for a pension until 65 rather than 57.

But despite exercising his option to return to YRC, relator did not return to work for medical reasons, described by his doctor as “[s]ituational stress, depression and anxiety,” and he submitted letters from a doctor to YRC on January 5, February 22, and April 3, 2012 indicating that he was unable to work. As a result, relator’s position with YRC was held open and he retained seniority. Relator’s doctor indicated that relator’s inability to return to work ended as of May 1, 2012, but relator had not returned to YRC as of the hearing on August 7, 2012. Relator testified that he has not returned to YRC because it is not suitable employment for him.¹

Relator was initially determined to be eligible for unemployment benefits as of May 6, 2012, but the union appealed this determination, and a telephonic hearing was held before a ULJ to determine whether relator was actively seeking suitable employment. Relator testified that he was actively seeking employment, by “looking for other Teamster locals[,] . . . other international unions[, and] . . . other trades.” Relator testified that “[a]ll local unions within the Teamsters have business agents” and “other

¹ Appellant did not seek unemployment benefits for the period between January 1, 2012 and May 6, 2012 so that period is not at issue.

international unions . . . have hired business agents as well.” Relator also testified that the union he worked for was “unique” in using elections to fill business agent positions because “[m]ost of the other locals are appointed, so they’re hired from the outside.” Relator noted that he knew of “one [person] in particular that was hired from the outside from another Teamster local.”

Relator testified that he has “made some contacts with some of these different locals, talking to them on a personal basis, and also making phone calls and trying to see who’s going to maybe do some hiring and who isn’t.” At the union organizations relator contacted, “some of the people . . . said that they weren’t hiring at this time, but there’s some that had said that they’d like me to get back to them, they look like there might be some hiring or posturing maybe to do some hiring in the very near future,” so relator was told “to keep in contact with them on a regular basis.” Relator also submitted a copy of his resume, letter of interest, and a list of 15 union organizations that received his resume and cover letter in June and July. Relator testified that this list included all Teamsters locals in Minnesota, with the exception of the union he worked for prior to losing the election for business agent.

Relator testified that he had not applied to any “employer organizations,” had not attempted to find work in the trucking industry or outside the labor relations or business agent areas, and had not searched for work with private companies, though he believed he could work for a non-union company dealing with contracts. In addition to talking to unions, relator testified that he used a union-focused website to search for union jobs. Relator testified that there were “a few” local unions that he had not yet contacted, and

“intended to get a hold of every . . . local in the state of Minnesota,” though he started with the Teamsters unions. Relator did not offer a reason for not contacting other unions, simply stating: “I guess I just haven’t gotten a hold of them.”

On the first day of the hearing, relator testified that he followed up on his contacts, and that he spent 25 to 30 hours per week looking for employment, including calling the unions, going to their offices and talking to people, spending time “being around,” and establishing personal communications. On the second day of the hearing, however, relator testified that he spent 25 or 30 hours in May contacting union employers, and a similar amount of time talking to potential union employers in June and July. Relator confirmed that this meant that he spent an average of five or six hours a week looking for work.

Following the hearing, the ULJ found that relator “has spent approximately five to six hours per week looking for work,” that “[m]ost of the unions that [relator] has sent his resume hire from within the union,” that relator “has little prospect of finding employment as a business agent with a union,” and that relator “has only been seeking employment with unions and has not been seeking non-union positions that he qualifies for.” The ULJ found that “suitable employment for [relator] is a full time business agent position,” and that he “has been available for suitable employment” since establishing his benefit account.

However, the ULJ found that relator “has not been actively seeking suitable employment,” for two reasons. First, that a “reasonable person who is genuinely interested in finding suitable employment would spend more than five hours per week

looking for work.” Second, that “a reasonable person, who is genuinely interested in obtaining employment, who has been unemployed for more than seven months, and who has little prospect of finding a job in his usual occupation as a business agent would accept an outstanding offer of employment with full benefits.” Further, the ULJ noted that, despite “slim” prospects for obtaining work as a business agent, relator “has not applied for or searched for non-union positions which he is qualified to do.”

Relator requested reconsideration, arguing that “[a] union business agent is a limited occupation, and [that] it takes time to both generate interest in [relator’s] services and for openings to develop.” Relator argued that it “is erroneous and unfair and contrary to common sense” to find that he is not seeking suitable employment by contacting Teamsters locals because “[t]he statute does not state that a difficult job search is not a reasonable job search.” As a result, relator argues, the ULJ was unreasonable in expecting that relator “should have done more than get his name out to unions that would logically consider his applications.” Relator also submitted a list of 28 additional union organizations that he contacted in August of 2012.

The ULJ affirmed the decision, indicating that relator “testified that he spent five hours per week looking for work,” and that “[o]n this basis alone, it cannot be said that [relator] was actively seeking suitable employment.” Further, the ULJ noted that because “the union business agent position is a limited occupation,” a reasonable person “would put forth more effort,” would “spend more than five hours per week generating interest,” “would apply for non-union positions[,] and would accept a job that pays \$23.56 per hour with full benefits.” This appeal follows.

DECISION

Relator argues that the ULJ erred in determining that he was not actively seeking suitable employment. Specifically, relator argues that his employment search was sufficient to satisfy the statutory criteria because he is in a limited market and because there are no specific standards against which a job search is judged. Relator further argues that the ULJ erred by indicating that a reasonable person in relator's situation would have accepted the position at YRC, despite the pay reduction, and considered employment outside of the union and business agent field.

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. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not actively seeking suitable employment.

Minn. Stat. § 268.085, subd. 16(a) (2012) (quotation marks omitted). "If reasonable prospects of suitable employment in the applicant's usual or customary occupation do not exist, the applicant must actively seek other suitable employment to be considered 'actively seeking suitable employment.'" *Id.*, subd. 16(c) (2012). Moreover, the definition of "[s]uitable employment" varies, based on, among other things, "length of unemployment" and "prospects for securing employment in the applicant's customary occupation." Minn. Stat. § 268.035, subd. 23a(a) (2012). When "prospects of finding employment in the applicant's usual or customary occupation" are "unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited

for the employment.” *Id.*, subd. 23a(b) (2012). Ultimately, “[e]mployment that may not be suitable because of lower wages during the early weeks of the applicant’s unemployment may become suitable as the duration of unemployment lengthens.” *Id.*, subd. 23a(c) (2012).

This court reviews de novo a ULJ’s decision that an applicant is ineligible to receive unemployment benefits. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010). But here, the determination of whether relator is eligible to receive benefits is contingent solely on whether he was actively seeking suitable employment, which is a factual determination. *Goodman v. Minn. Dep’t of Emp’t Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977); *McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 712 (Minn. App. 2010). We view the ULJ’s factual findings in the light most favorable to the decision and will not disturb those findings “when the evidence substantially sustains them.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). In reviewing a certiorari appeal from a ULJ’s decision, we may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in the record or are otherwise arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2012).

The ULJ found that relator has spent “five to six hours per week looking for work.” There was some discrepancy in the record about the amount of time that relator searched for employment, but this finding is supported by relator’s own testimony at the

second hearing. The ULJ also found that relator “contacted four unions to inquire about job openings” in May 2012, and relator testified that he also contacted 15 unions in June and July. Thus, relator contacted a total of 19 potential employers in the first three months he was seeking employment. Relator testified that in making those contacts, he followed up with organizations indicating they may have opportunities, that he talked to organizations in person and over the phone, prepared a resume and letter of interest, and checked a union job website regularly. The ULJ found this level of activity insufficient for relator to be actively seeking suitable employment.

While relator had what seems to have been quality contacts with potential employers, when we view the evidence in the light most favorable to the decision, we cannot conclude that the ULJ’s findings are not substantially supported by the evidence in the record. Moreover, we believe that, considering the limited nature of union organization employment and union business agent positions specifically, it is reasonable to require relator to seek employment outside of the union organization context. *See* Minn. Stat. § 268.085, subd. 16(c) (“If reasonable prospects of suitable employment in the applicant’s usual or customary occupation do not exist, the applicant must actively seek other suitable employment to be considered ‘actively seeking suitable employment.’”).

Thus, there is substantial support in the record for the ULJ’s decision that relator spent only a few hours per week seeking employment and that relator unreasonably failed to broaden his job search beyond that of a union business agent when he knew that the job possibilities were limited in that occupation. Because we defer to the ULJ’s factual

determinations regarding whether an applicant is actively seeking suitable employment, and because there is evidentiary support for the ULJ's determinations, we affirm the ULJ's decision that relator is not entitled to unemployment benefits.

Affirmed.