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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1421**

Tanya J. Ryks,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2008
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 5510 07

Tanya J. Ryks, 948 County Road 43, Pine River, MN 56474 (pro se relator)

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

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

UNPUBLISHED OPINION

ROSS, Judge

This certiorari appeal arises from an unemployment law judge's finding that Tanya Ryks, a former accountant, failed to actively seek and be available for suitable employment, as required to obtain unemployment benefits under Minnesota Statutes,

section 268.069 (2006). Ryks appeals, contending that the judge did not apply a reasonable definition of “suitable employment,” and that he erroneously concluded that she was not actively seeking and available for suitable employment. Because we hold that substantial evidence supports the unemployment law judge’s findings that Ryks was not actively seeking suitable employment and did not make herself available for suitable employment, we affirm.

FACTS

Tanya Ryks established an unemployment benefits account effective September 24, 2006, following her employment as an accountant from June 2003 to April 2004 and from August 2004 to October 2006. In addition to her experience as an accountant, Ryks has a bachelor’s degree in business. In 2007, the International Teaching Training Organization certified her to teach English as a second language in Minnesota. Ryks has no paid teaching experience, but she has volunteered as a teacher’s aide, as a Sunday school teacher, and to teach underprivileged youth.

In January 2007, Ryks went to Mexico to interview for a teaching position. She received no job offer, but she remained in Mexico. A Department of Employment and Economic Development adjudicator determined in March 2007 that Ryks was no longer eligible for benefits and that she had been overpaid since January because she was not seeking suitable employment.

Ryks appealed and a telephone hearing was held in April 2007. She testified that she had applied for nine jobs and had several interviews in Mexico. Ryks submitted evidence that she called 42 companies inquiring about employment in February and

March. One English-language institution offered Ryks a teaching position, but she told the unemployment law judge (ULJ) that she rejected the offer because the hours were from 7 to 9 a.m. and 6 to 10 p.m. Ryks contended that she could not function on merely five to six hours of sleep.

Ryks told the ULJ that she expected to earn between \$800 and \$1,100 per month if she were hired to teach in Mexico, and she estimated that those earnings would sustain her. Although Ryks did not possess a work visa allowing her to maintain employment in Mexico, she opined that her eventual employer would complete the paperwork necessary for her to obtain the visa. Ryks testified that she has not looked for accounting or business employment in Mexico because she prefers to teach.

The ULJ determined that although Ryks was searching for work, she did not seek or make herself available for “suitable employment” as defined by Minnesota Statutes, section 268.035, subdivision 23a (2006), because she excluded accounting positions and sought work only in Mexico but not in Minnesota. The ULJ therefore concluded that Ryks was ineligible for unemployment benefits. Ryks requested reconsideration and the ULJ affirmed his decision. Ryks then filed this certiorari appeal.

D E C I S I O N

Ryks challenges the unemployment law judge’s determination that she is ineligible for unemployment benefits. This court reviews the ULJ’s decision to determine whether the findings, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial

evidence in view of the entire record as submitted; or (6) arbitrary and capricious.” Minn. Stat. § 268.105, subd. 7(d) (2006). Questions of law are reviewed de novo, but this court will uphold the ULJ’s findings of fact if they are supported by substantial evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). We view a ULJ’s factual findings in the light most favorable to the ULJ’s decision. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An applicant is not eligible to receive unemployment benefits from the state unemployment insurance trust fund unless she meets the weekly eligibility requirements outlined in Minnesota Statutes, sections 268.085 and 268.086. Minn. Stat. § 268.069, subs. 1, 2 (2006). The applicant must be available for and actively seeking suitable employment. Minn. Stat. § 268.085, subd. 1(4) (2006). “Suitable employment” is “employment in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a (2006). “Actively seeking suitable employment” means to make

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) (2006). To be available for suitable employment means to be ready and willing to accept suitable employment in the relator’s labor market area. Minn. Stat. § 268.085, subd. 15 (2006).

Ryks challenges the ULJ's interpretation of "suitable employment." She suggests that "suitable employment" for her is limited to positions for which she is emotionally able to perform and that match her interests. But our decision is controlled by the plain language of the statute. Minn. Stat § 645.16 (2006) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."). We will therefore apply the plain statutory definition of "suitable employment."

Under that definition, we agree with the ULJ that Ryks was not actively seeking suitable employment in her labor market area. Although Ryks prefers to change careers, accounting work is suitable employment for her because it is reasonably related to her qualifications based on her education and work experience. Ryks also has no paid experience as a teacher, and her formal training includes only a single course. "Suitable" is broader than preferred. The statute specifically requires that a relator's search include those positions within her training, experience, and qualifications. Minn. Stat. § 268.085, subd. 16(a). We do not suggest that the statute precludes Ryks from seeking her preferred employment of teaching, but to remain eligible for unemployment benefits, she may not confine her search to teaching positions. *Id.* (stating that to be eligible for unemployment benefits, a relator must not limit her search to positions that are beyond her training, experience, or qualifications). The record therefore supports the ULJ's finding that Ryks is not actively seeking suitable employment because she excluded accounting positions from her search.

The ULJ separately concluded that Minnesota was Ryks's labor market area and that by excluding Minnesota from her job search Ryks was not available for suitable employment. Ryks travelled to Puerto Vallarta, Mexico, on January 29, 2007, and she was residing in a hotel there at the time of her hearing in April. She testified that she planned to establish a permanent residence in Mexico only if she obtained employment. She admitted that she still received mail at her Minnesota address and lacked a work visa. Ryks argues that the fact that she maintains an address in Minnesota does not require a finding that her labor market area is Minnesota. But the ULJ also considered the temporary nature of hotel residence and her admission that she had no permanent address in Mexico, no work visa, and no job, and that she planned to return to Minnesota in June 2007 if she did not find work in Mexico. The ULJ's finding that Ryks's permanent residence and labor market area was Minnesota is factually supported and is not contrary to law. The ULJ's determination that Ryks was unavailable for suitable employment because she was not applying for work in her labor market area is not erroneous. We affirm the ULJ's decision.

Affirmed.