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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1612**

Nancy Levang,  
Relator,

vs.

TCG Incorporated,  
Respondent,

Department of Employment  
and Economic Development,  
Respondent.

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

Department of Employment and Economic Development  
File No. 250223

Nancy C. Levang, 4430 Cedar Lake Road, Unit 8, Minneapolis, MN 55416 (pro se  
relator)

TCG Incorporated, 17 Washington Avenue, Minneapolis, MN 55401 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic  
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MN 55101-1351(for respondent DEED)

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

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

## UNPUBLISHED OPINION

CRIPPEN, Judge

Relator Nancy Levang disputes an unemployment law judge's (ULJ) conclusion that she was assigned suitable employment by Dolphin, a staffing service operated by respondent TCG Incorporated. Because the record supports the ULJ's conclusion and we find no abuse of discretion in denying relator's request for reconsideration, we affirm.

### FACTS

This case is here after remand in an earlier appeal. Our prior opinion affirmed the ULJ's conclusion that relator quit her employment with Dolphin when she failed to request more work after completing a temporary data-entry assignment at Medtronic. *Levang v. TCG Inc.*, No. A07-0611, 2008 WL 853461, at \*2 (Minn. App. Apr. 1, 2008).<sup>1</sup> We also affirmed denial of reconsideration in which relator sought to submit her resume as new evidence. *Id.* at \*3.

We remanded for development of the record because the ULJ had not addressed one relevant aspect of the statutory definition of "quit," namely, whether the prior data-entry assignment was suitable employment for relator. *Id.* at \*2. On remand, the ULJ relied on the existing record, which consisted primarily of the Employee Message Report (EMR), a communication log that Dolphin kept during its association with relator. The

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<sup>1</sup> Under Minn. Stat. § 268.095, subd. 2(d) (Supp. 2007), a quit from a temporary job assignment from a staffing service is deemed to occur when the temporary employee fails without good cause to request a new job assignment within five days. This provision is operative upon the employee's completion of a "suitable temporary job assignment" from the staffing service. *Id.* Thus, the case requires attention to the suitability of a job assignment that relator completed on March 3, 2005.

record also included a form that relator signed acknowledging her duty to request new assignments in order to maintain her employment relationship with Dolphin.

On remand, the ULJ found the data-entry assignment to be suitable for relator, incorporated its previously affirmed findings, and concluded that denying benefits was proper. The ULJ again denied relator's motion for reconsideration. She now brings the suitability issue to this court by writ of certiorari. She also seeks to address, as a matter of fact, whether she received a copy of the form she signed acknowledging her duty to request a new assignment.

### **DECISION**

Minn. Stat. § 268.035, subd. 23a(a) (Supp. 2007), defines suitable employment as “employment in the applicant's labor market area that is reasonably related to the applicant's qualifications.” The factors to consider, as relevant here, include “prior training, experience, length of unemployment, [and] prospects for securing employment in the applicant's customary occupation.” *Id.* One of the primary considerations is “whether the applicant has favorable prospects of finding employment in the applicant's usual or customary occupation at the applicant's past wage level within a reasonable period of time.” *Id.*, subd. 23a(b) (Supp. 2007). If prospects 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 considering the applicant's education, training, work experience, and current physical and mental ability.” *Id.*

On certiorari appeal, we review fact issues in a light favorable to the ULJ's decision and do not disturb them if substantial evidence exists to sustain them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); *see* Minn. Stat. § 268.105, subd. 7(d)(5) (Supp. 2007) (providing for reversal if findings are “unsupported by substantial evidence in view of the entire record as submitted”). The ULJ's factual findings on suitability are thus entitled to deference, particularly given the department's expertise in employment matters. *Levang*, 2008 WL 853461, at \*2; *see also Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977) (stating that courts owe deference to agencies' “special knowledge in the field of their technical training, education, and experience”).

The ULJ's written decision finds that relator came to Dolphin with experience “in human resources in administrative work and screening,” and that relator interviewed for two positions in human resources but was not hired. It notes that she initially “tested low in data entry,” and that she sought temporary positions doing “administrative assistant or reception type work.” It further states that one of her first temporary assignments involved “doing clerical-type work involving catching errors on title papers,” earning \$13.50 an hour.

The ULJ found that relator was pulled from an assignment at Medtronic “because they did not have time to train her.” The ULJ's decision states that she accepted two subsequent assignments at Medtronic, continuing through March 3, 2006, and that relator “kept accepting the extensions.” It also states that she earned “\$15 or \$16 an hour” at the

Medtronic positions and that the final position, lasting about six months, was almost all data entry.

The findings have substantial support in the record. All are drawn or fairly inferred from Dolphin's notations on relator's EMR, which records her communication with Dolphin about interests and assignments. It includes notes about her qualifications, job duties at assignments, the pay involved, and comments relator made relative to the assignments. The record shows no cause to disturb the ULJ's findings.

This does not end our inquiry. As with other statutory factors underlying unemployment benefits, we "exercise our independent judgment" about whether the findings support the ultimate conclusion that work was suitable. *See Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (stating that determining disqualification under the statute is a question of law).

Examining the statutory definition of suitable employment, it is evident that relator's prospects of getting an administrative or clerical job in human resources were unfavorable. She was not hired for either such position in which Dolphin attempted to place her. She subsequently expressed interest in non-human resources assignments at a clinic, and in the first of the assignments at Medtronic, which involved event planning. Her own actions, therefore, suggest that temporary, non-human resource administrative jobs—such as the data-entry job at issue here—were suitable for her.

Given her prospects, "employment at lower skill or wage levels" could be deemed reasonably suitable for relator. Minn. Stat. § 268.035, subd. 23a(b). In fact, she fared even better, as the data-entry job taught her new skills and paid her more money than she

had been earning. Even if her data-entry scores were initially low, she demonstrated an ability to learn and apparently flourished. The record shows that she took the assignment on a trial basis, the “first day went great,” she accepted extensions, and that she completed it ahead of schedule on March 3. The fact that she originally had “low DE [data entry] scores,” does not make the job a poor fit. As the ULJ stated, data-entry work is reasonably related to other administrative or clerical work. *Cf. Kaiser v. Adecco USA, Inc.*, No. A04-1428, 2005 WL 646691, at \*2 (Minn. App. Mar. 25, 2005) (concluding job was suitable when compared to location, duties, and pay of other temporary positions employee had held).

We also observe that, under another statutory provision, if an unemployed person quits a job and wants to receive benefits, she can claim that the job was unsuitable only if she stayed at it for less than thirty days. Minn. Stat. § 268.095, subd. 1(3) (Supp. 2007). This rule “encourages those who are unemployed to try new lines of work to become reemployed.” *Medek v. St. Peter Church & School*, No. A06-2108, 2007 WL 3347476, at \*1 (Minn. App. Nov. 13, 2007). Whether the thirty-day rule applies to temporary staffing, we are persuaded that, for a person with unfavorable prospects, keeping a related job is consistent with the purpose of encouraging new possibilities. Relator kept the data-entry assignment at Medtronic about six months and completed it successfully. Such employment can therefore be deemed suitable.

We briefly address relator’s other argument in this appeal. After the ULJ’s determination on remand, relator argued in her request for reconsideration that she had never received a copy of the signed form acknowledging her duty to request new work

from Dolphin after completing a job. The ULJ denied reconsideration. We must give deference to a ULJ's denial of an additional hearing. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

We previously affirmed a finding that relator had signed the form. *Levang*, 2008 WL 853461, at \*2. The form is in the record and it states that, by signing it, relator acknowledged she received a copy. The ULJ did not abuse her discretion in declining to consider this argument.

**Affirmed.**