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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1874**

Melissa M. Hurt,
Relator,

vs.

Goodthings, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 9, 2012
Affirmed
Willis, Judge***

Department of Employment and Economic Development
File No. 28105248-3

Melissa M. Hurt, Middleville, Michigan (pro se relator)

Goodthings, Inc., White Bear Lake, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Willis,
Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Relator challenges an order by an unemployment-law judge (ULJ) denying reconsideration of an order dismissing relator's administrative appeal from a determination that she is ineligible for unemployment benefits. Because the ULJ did not abuse her discretion in determining that relator had not shown good cause for failing to appear at a scheduled evidentiary hearing, we affirm.

FACTS

Relator Melissa Hurt applied for unemployment benefits after she quit her employment with respondent Goodthings, Inc. Respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility because Hurt quit work to relocate for a personal reason, and Hurt filed an online administrative appeal of the decision. In the section provided for explaining the reasons for her appeal, Hurt wrote that she "would appreciate if this appeal could be done without me being present" because she had moved to and was working at a full-time job in Michigan. Hurt also typed in a telephone number in a field titled "Telephone number for the appeal hearing."

Three days later, DEED sent Hurt a notice of appeal, advising that a hearing had been scheduled; that the hearing would "be held by telephone conference call"; that "[t]he judge will call you to participate in this hearing"; that the judge would contact her at the telephone number that she had provided; and that she should contact DEED if she

wanted the judge to contact her at a different telephone number or if she needed to reschedule the hearing. Hurt did not contact DEED before the hearing.

On the date and at the time scheduled for the hearing, the ULJ called Hurt and reached her voice mail. The ULJ left a message telling Hurt that her participation in the hearing was required; warning that if she did not participate the appeal would be dismissed; and giving her a DEED telephone number to call if she wanted to participate. The ULJ placed a second call 15 minutes later and again reached Hurt's voice mail. The ULJ left a second message stating that she would be dismissing the appeal and telling Hurt to call DEED if she had any questions.

One day after the ULJ issued an order dismissing her appeal, Hurt requested reconsideration. She asked the ULJ to review her appeal again, explaining that she had been unable to attend the hearing in person because she lived too far away. The ULJ ruled that Hurt had not shown good cause for missing the hearing and affirmed the dismissal. This certiorari appeal follows.

D E C I S I O N

When a party appeals a determination that she is ineligible for unemployment benefits, an evidentiary hearing is scheduled before a ULJ. Minn. Stat. § 268.105, subd. 1(a) (2010). The applicant must personally participate in the hearing; “[s]ubmission of a written statement does not constitute participation.” *Id.*, subd. 1(d) (2010). When an appealing party fails to participate in a scheduled hearing, the ULJ “has the discretion to dismiss the appeal by summary order.” *Id.* The appealing party “is considered to have

failed to exhaust available administrative remedies” unless she seeks reconsideration and shows “good cause for failing to participate in the evidentiary hearing.” *Id.*

If a party shows good cause for failing to participate in an evidentiary hearing, the ULJ must order an additional evidentiary hearing. *Id.*, subd. 2(d); *see id.*, subd. 1(d). “Good cause” is defined as “a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.*, subd. 2(d). This court reviews the ULJ’s decision declining a request for an additional hearing for an abuse of discretion. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

The ULJ did not abuse her discretion by determining that Hurt had not shown good cause for failing to participate in the evidentiary hearing. DEED notified Hurt that her appeal hearing would be held by telephone conference and specifically advised her of the date, time, and number at which the ULJ would call her. Hurt does not dispute receiving this notice. On the day of the hearing, the ULJ left two messages for Hurt, directing her to call DEED if she wished to participate in the hearing. Hurt did not return those calls. Hurt asserts that she remained unaware that she could participate in the hearing by telephone until she received the ULJ’s decision on reconsideration. But given the plain language of the hearing notice and Hurt’s failure to respond to two separate messages from the ULJ, we conclude that she has not shown “a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.*, subd. 2(d).

Affirmed.