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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1842**

Barton C. Winter,
Relator,

vs.

Alternative Staffing, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed August 13, 2012
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development
File No. 27937186-3

Barton C. Winter, Birchwood, Minnesota (pro se relator)

Alternative Staffing, Inc., Bloomington, Minnesota (respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and
Willis, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he refused an offer of suitable employment without a compelling reason to do so. We affirm.

FACTS

Relator Barton C. Winter worked as an engineer from 1986–1990 and as an attorney from 1997–2009. From September–December 2009, he worked through a staffing agency performing medical-product assembly at a rate of \$11.45 per hour. In early 2010, Winter worked for a few days at a medical-products company and a plastics recycling center, earning less than \$10 per hour. From March–December 2010, he worked through a staffing agency as a fab operator, processing wafers and replacing layers on wafers for microelectronic applications, earning approximately \$12 per hour. He was not hired as a permanent employee at the fab-operator job and established a benefits account with the Minnesota Department of Economic Development (DEED) seeking unemployment benefits.

In June 2011, Winter responded to an ad for a fab-operator position. He met with a representative of Alternative Staffing, Inc. (ASI), who indicated that she would submit his credentials to that company. The representative also told Winter that she had a one-day job for him the next day, loading bicycles for a charity ride for six hours at \$10 per hour. She told Winter that the job, which was located near his home, would be a good opportunity for him to meet people.

After confirming with the ASI representative that taking the job would not negatively affect his unemployment benefits, Winter agreed to take the one-day job. But later that day, he had second thoughts, and without informing ASI, he failed to show up for the job the next day. ASI then terminated its relationship with Winter.

An adjudicator determined Winter ineligible for unemployment benefits for eight weeks on the ground that the one-day job amounted to suitable employment, which he did not have a compelling reason to refuse. On appeal, at a hearing before a ULJ, an ASI representative testified that Winter's failure to tell ASI that he would not be attending the one-day job indicated that he was not dependable and would not be a good candidate for referral to a client. Winter acknowledged that he had received a copy of ASI's brochure, which stated that failure to show up for work or to call would result in termination from ASI's services. But he argued that the one-day job offer was casually made, related only to a charitable cause, and was not suitable employment reasonably related to his qualifications.

The ULJ found that, despite Winter's educational background, his unfavorable employment prospects in his usual occupation made the job offer suitable. Winter requested reconsideration, and the ULJ affirmed, finding that even if his temporary positions in manufacturing were considered to be his usual occupation, the record showed that he had low prospects for securing employment in those positions because he had been largely unemployed for more than six months before the one-day job offer. The ULJ found that although the one-day job required less skill and offered lower prestige and pay than Winter's previous employment, his long period of unemployment, low

prospects of securing other employment, and ability to perform the work made the offer suitable. This certiorari appeal follows.

D E C I S I O N

In reviewing a ULJ's decision relating to eligibility for unemployment benefits, this court examines whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by legal error. Minn. Stat. § 268.105, subd. 7(d) (2010).

Winter argues that the ULJ erred by determining that he was ineligible for benefits because he refused suitable employment. Suitability of employment is, in part, a fact question. *See Hogenson v. Brian Knox Builders*, 340 N.W.2d 360, 363 (Minn. App. 1983) (remanding for factual determination of suitability). We view factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But we exercise independent judgment as to 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 ineligibility under statute presents question of law).

An applicant loses eligibility for unemployment benefits for eight calendar weeks if the applicant fails to accept or avoids an offer of suitable employment without good cause. Minn. Stat. § 268.085, subd. 13c(a)(2), (3) (2010). "Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications." Minn. Stat. § 268.035, subd. 23a(a) (2010). Consideration of

whether employment is suitable involves a number of factors, including any health or safety risks involved, as well as the applicant's prior experience and training, length of unemployment, prospects for obtaining employment in his or her customary occupation, and the proximity of the work to the applicant's home. *Id.* “[P]rimary consideration is given to the temporary or permanent nature of the applicant's separation from employment and 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) (2010). If an applicant has unfavorable prospects and is reasonably suitable for the employment, “employment at lower skill or wage levels is suitable.” *Id.* Whether assignments offered by a temporary-employment agency amount to offers of suitable employment depends on the pattern of the applicant's demonstrated work history. *Mbong v. New Horizons Nursing*, 608 N.W.2d 890, 893 (Minn. App. 2000).

Winter argues that ASI's employment offer was not suitable because the job's low pay, unskilled nature, and brief duration were not reasonably related to his qualifications. But in examining the relevant statutory factors, we conclude that the ULJ did not err by determining that the one-day job was suitable employment for Winter. Winter had no health or safety reasons that he could not perform the work, which was located near his home. Although Winter held two nine-month temporary jobs in 2009 and 2010, the record shows that he also had additional very short-term temporary jobs during that period. *Cf. id.* at 894 (concluding that ULJ erred by finding that one-day work assignments were suitable employment when applicant had worked at long-term

assignments during base period, and applicant's previous one-day jobs had been cancelled at the last minute). And although the pay offered for the one-day job was about 20% less than that at Winter's long-term temporary jobs, that factor alone does not make the employment unsuitable. *See, e.g., Mastley v. Comm'r of Econ. Sec.*, 347 N.W.2d 515, 518–19 (Minn. App. 1984) (finding \$8.50 per hour suitable even though claimant's previous job paid \$10 per hour).

Winter argues that the ULJ erred by using a standard of suitable employment that was based on his previous professional work as an engineer and attorney. But although the ULJ initially appeared to consider Winter's professional positions as suitable employment, on reconsideration, the ULJ found that even if the temporary positions that Winter had held since 2009 were considered to be his usual occupation, the evidence showed that he had low prospects for securing employment in those positions because he had been largely unemployed for more than six months. The ULJ did not clearly err by finding that, based on Winter's six-month period of unemployment, his employment at a lower skill and wage level was suitable. *See* Minn. Stat. § 268.035, subd. 23a(c) (2010) (stating that “[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”).

We also reject Winter's argument that his positive interview with ASI showed that he had favorable employment prospects in his “usual or customary occupation” of fab operator. *See id.*, subd. 23a(b). Although Winter's initial interview with ASI was

encouraging, given his recent job history, the ULJ did not clearly err by finding that Winter had unfavorable job prospects as a fab operator.

Winter also argues that, even if the one-day job amounted to suitable employment, he had good cause to reject it because it had no connection to the job that initially brought him to ASI. “‘Good cause’ is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment.” Minn. Stat. § 268.085, subd. 13c(b). An employee cannot reject a suitable job offer because he or she is waiting for a better opportunity. *See Preiss v. Comm’r of Econ. Sec.*, 347 N.W.2d 74, 77 (Minn. App. 1984) (determining that no good cause existed to reject suitable employment when relator argued she refused job offer because she was waiting for a better opportunity). Winter had no guarantee that he would be offered the fab-operator position. We conclude that the ULJ did not err as a matter of law by finding that a reasonable person in Winter’s position would have accepted the job offered and that no good cause existed to reject the job, and substantial evidence supports the ULJ’s decision of ineligibility.

Affirmed.