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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0930**

Robert Huseby,
Relator,

vs.

Reassurance Property Management, LLC,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed February 11, 2013
Affirmed
Cleary, Judge**

Department of Employment and
Economic Development
File No. 27549557-7

Robert Huseby, Belview, Minnesota (pro se relator)

Reassurance Property Management, LLC, Nisswa, Minnesota (respondent)

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

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

Relator appeals the decision of an unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits after being laid off from seasonal employment because he did not actively seek suitable employment. Because the ULJ did not err by finding that relator did not actively seek suitable employment and did not abuse her discretion by declining to hold an additional hearing based on evidence not submitted during the initial evidentiary hearing, we affirm.

FACTS

Relator Robert Huseby worked full-time for Reassurance Property Management, LLC (Reassurance) doing landscaping work during the summer of 2010. In the fall of 2010, relator was a full-time student taking college classes to earn a certificate in landscape technology. During the winter of 2010–2011, relator worked for Reassurance between five and ten hours per week performing snow removal. Relator applied for unemployment benefits in December 2010. The Minnesota Department of Employment and Economic Development (DEED) determined that relator was ineligible to receive benefits because he was a student who was not willing to quit school to accept suitable employment, and relator did not appeal this determination.

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

Relator again took full-time college classes in the spring of 2011. Relator earned his certificate in May 2011. Between May and September 2011, relator worked full-time for Outdoor Oasis doing landscaping work. Between September and December 5, 2011, relator worked full-time for Lee's Landscaping & Design (Lee's) doing landscaping work. Relator was laid off by Lee's on December 5, 2011.

Upon being laid off, relator again applied for unemployment benefits. DEED's records initially showed that relator was still enrolled in school, and therefore ineligible to receive benefits, but the records were eventually corrected. DEED then found relator eligible to receive benefits beginning January 8, 2012, and relator did begin receiving benefits. However, relator appealed DEED's determination, hoping to be back-paid benefits for the five weeks between when he was laid off and January 7, 2012. Relator received a notice that an evidentiary hearing would be held to consider the "[a]vailability-[a]ctively [s]eeking issue."

The ULJ held an evidentiary hearing on February 9, 2012. During the hearing, relator testified that, since being laid off, he had spent a "[c]ouple of hours" each week looking for work. He testified that he had sought a new job by looking at on-line employment listings and by "talking to family and friends to see if there's anything available." He stated that he may skim through the newspaper if a paper is available, but that he had not registered with a staffing service or done anything else to look for work. He also stated that he had applied for one position at a service station and that he hoped to be going back to work for Lee's in the spring of 2012.

On February 15, 2012, the ULJ issued findings of fact and a decision that relator was not eligible to receive unemployment benefits because he was not actively seeking suitable employment. Relator requested reconsideration of the ULJ's decision and provided a document entitled "Work Search History" to support his position that he was actively seeking suitable employment. On April 20, 2012, the ULJ issued an order affirming the decision as factually and legally correct. The order also explained that the ULJ was declining to hold an additional evidentiary hearing based on the "Work Search History" document because the document would not change the outcome of the matter; there was no good cause for it not to have been submitted during the evidentiary hearing; it was not credible because it conflicted with relator's hearing testimony; and it did not show that evidence submitted during the hearing was false. This certiorari appeal followed.

DECISION

I.

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, 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 or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2010). The court must view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ and not disturbing the ULJ's factual findings when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

To be eligible to receive unemployment benefits, an applicant must, among other things, be "actively seeking suitable employment." Minn. Stat. § 268.085, subd. 1(5) (2010). "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." *Id.*, subd. 16(a) (2010). "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.' This applies to an applicant who is seasonally unemployed." *Id.*, subd. 16(c) (2010); *see also* Minn. Stat. § 268.035, subd. 23a(d) (Supp. 2011) (stating that, for an applicant who is seasonably unemployed, "suitable employment" may include temporary work in a lower-skilled occupation); *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 711 (Minn. App. 2010) (stating that "seasonal employees must actively seek employment to be eligible for unemployment benefits").

Minnesota caselaw has held that merely looking at online and newspaper employment listings, contacting acquaintances, and applying for a few positions may be

insufficient to show that an applicant for unemployment benefits is actively seeking suitable employment. *See, e.g., Monson v. Minn. Dep't of Emp't Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (affirming a determination that researching a data bank for employment opportunities, regularly consulting professional journals and newspaper employment notices, and applying for two or three positions during a two-month period does not constitute actively seeking employment); *McNeilly*, 778 N.W.2d at 712 (affirming a determination that a landscaper who had applied for unemployment benefits during the off-season had not actively sought employment when his job-search efforts consisted of “ask[ing] around for work”).

During the evidentiary hearing, relator testified that he was spending a couple of hours per week searching for work by looking at on-line employment listings and talking to family and friends. He stated that he may skim through a newspaper if one is available and that he had applied for one position. But he testified that he had not registered with a staffing service or done anything else to look for work. The ULJ did not err by finding that relator did not actively seek suitable employment after being laid off by Lee's.

II.

Relator has claimed that he was not adequately prepared to answer questions regarding his job-search efforts during the evidentiary hearing. In his request for reconsideration, he submitted additional evidence which outlined what he claimed were his actual job-search efforts. The ULJ declined to hold an additional evidentiary hearing based on this evidence.

“In deciding a request for reconsideration, the unemployment law judge must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing” Minn. Stat. § 268.105, subd. 2(c) (2010).

The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id. “A reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus*, 721 N.W.2d at 345.

The ULJ determined that relator had not shown good cause for failing to submit the document on job-search efforts at the evidentiary hearing. Relator’s only justification for failing to do so is that he was not “ready” or “adequately prepared” to answer questions about his job search. But the notice for the evidentiary hearing informed relator that the “[a]vailability-[a]ctively [s]eeking issue” would be considered at the hearing. The ULJ also determined that the document “is not credible because it conflicts with [relator’s] testimony regarding his job search efforts during the hearing.” This court must defer to the ULJ’s credibility determinations. *Id.* at 344. Because the ULJ found that the document was not credible, it would not “likely change the outcome of the decision” or “show that the evidence that was submitted at the evidentiary hearing was

likely false.” Minn. Stat. § 268.105, subd. 2(c). The ULJ did not abuse her discretion by declining to hold an additional evidentiary hearing based on evidence not submitted during the evidentiary hearing.

Affirmed.