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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2348**

Gladys M. Dixon,  
Relator,

vs.

Unicare Home Health Services, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed October 7, 2013  
Affirmed  
Hooten, Judge**

Department of Employment and Economic Development  
File No. 30117590-3

Gladys M. Dixon, Waterloo, Iowa (pro se relator)

Unicare Home Health Services, Inc., Minneapolis, Minnesota (respondent)

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

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and  
Hooten, Judge.

## UNPUBLISHED OPINION

**HOOTEN**, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that she is ineligible for unemployment benefits because she was not actively seeking suitable employment and, alternatively, because she was not available for suitable employment due to her absence from her labor market. Because the ULJ's findings that appellant was not available for suitable employment and not actively seeking suitable employment have substantial support in the record, we affirm.

### FACTS

Relator Gladys M. Dixon worked 20 hours per week for Septran as a bus driver and 30 minutes each day for respondent Unicare Home Health Services, Inc. (Unicare) as a personal care attendant for her son. Relator was laid off from Septran on August 2, 2012 and established an unemployment benefits account with the Minnesota Department of Employment and Economic Security (DEED) on August 5, 2012. On August 11, 2012, relator went to Iowa because another son, who resided there, was injured in a serious car accident. Subsequently, relator was determined by DEED to be ineligible for unemployment benefits because after August 11, 2012, she was not available for or actively seeking suitable employment in Minnesota. Relator appealed this determination, and an evidentiary hearing was scheduled for October 1, 2012. On September 17, relator returned to Minnesota from Iowa and began working for Septran again. At the time of the hearing, relator was still working for Septran and Unicare.

At the hearing, relator testified that she was planning to move back to Iowa on October 28, 2012, and, since she had almost completed packing for the move, would be available to begin work in Iowa on that date. Relator had given notice to both Unicare and Septran that she would be terminating her employment as of October 28.

Relator admitted that there are no limitations on the times or days that she would be willing to work, she did not have any medical conditions that would prevent her from working, and she had transportation to and from any employment. Further, relator testified that even though she was the legal guardian of the son for whom she was the caretaker, there was a sufficient network of family and friends to care for him if she were employed. Relator also enrolled in an online college to pursue a degree in paralegal studies, which was flexible enough so that her class schedule could be rearranged so that it would not preclude her from accepting employment. Relator claimed that caring for the son who was in Iowa would not have precluded her from accepting employment, because other family members were available to care for him.

Relative to her job search, relator testified that she spent about two hours per day looking for jobs (or about ten hours per week), which she opined was enough time for her job search. Relator testified that this time included “go[ing] online and fill[ing] out the applications and tak[ing] the quizzes and questionnaires.” Relator further testified that she had applied for about 15 jobs, and had two interviews: one with “Metro Transit in Iowa,” for which she was “waiting for the background check,” and another interview with Wells Fargo. Relator also mentioned that she had an interview scheduled with GMAC Mortgage on October 29, 2012. Relator testified that she (1) was looking for jobs

online and in the newspaper in Waterloo, Iowa; (2) was looking for jobs in Waterloo, Cedar Rapids, and Cedar Falls, Iowa; (3) has spoken to her academic advisor about an internship program in the paralegal studies program in Iowa; (4) was networking with friends and going to see employers in person; (5) went to a workforce center in Iowa; and (6) had posted her resume online. Relator testified that she would accept a job in Minnesota, despite her plans to move to Iowa and that she had submitted three applications in Minnesota. Relator indicated that she had not contacted any temporary employment agencies.

Following the hearing, the ULJ found that relator was in Iowa from August 11 to September 17, 2012, but that caring for her son in Iowa during that time would not have affected her ability to accept any offered employment. The ULJ also found that relator's attendance at an online university would not impede acceptance of employment. The ULJ noted that relator returned to Minnesota in September "to pack up her house," because she intended to move to Iowa. Based upon relator's testimony, the ULJ found that her "labor market area is the area surrounding Waterloo, Iowa." The ULJ found that relator "spends about two hours per day looking for work," including looking on one employment website and in the newspaper, networking with friends, and speaking to her academic advisor about internship possibilities. Finally, the ULJ noted that relator had applied for about 15 jobs since applying for benefits, including three jobs in Minnesota.

Based on these findings and due to the fact that relator was in Minnesota for personal reasons, the ULJ determined that relator was not available for suitable employment in her labor market in the area surrounding Waterloo, Iowa, from August 5

to August 11, 2012, and from September 17 through the date of the hearing. But the ULJ determined that relator was present in her labor market area from August 11 to September 16, 2012, and thus was available for suitable employment. However, the ULJ determined that if relator were actively seeking suitable employment, she “would spend more than two hours per day looking for work.” For these reasons, the ULJ determined that relator was ineligible for unemployment benefits from August 5, 2012 through the date of the hearing, and until circumstances change.

Relator requested reconsideration, arguing that the ULJ erred “by limiting [her] work area” to one specific area and that her job search activities should be determinative of whether she was actively looking for work rather than the amount of time that she spent. On reconsideration, the ULJ affirmed the previous decision, noting that relator did “not provide any new facts as to why she believe[d] the decision” is incorrect. The ULJ stated that, while relator stated that she would be willing to stay in Minnesota if she were to get a job here, she had only applied to three jobs in Minnesota. She also stated that it was her intention to move to Iowa permanently and she returned to Minnesota only to pack her household and personal belongings. Moreover, the ULJ noted that relator stated that she was looking for work in Iowa and focused her job search in Iowa by looking in the paper there, indicating that Iowa was her primary labor market. Finally, the ULJ concluded that relator’s argument—that the way she used her time searching for a job was more important than the amount of time she spent—did not present new evidence or change the ultimate conclusion that relator was not actively seeking suitable employment. This matter comes before us upon relator’s writ of certiorari.

## DECISION

In reviewing a certiorari appeal from a ULJ's decision, we may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in the record or are otherwise arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2012).

Relator challenges the ULJ's determinations that she was unavailable for suitable employment for certain periods and was not actively seeking suitable employment.<sup>1</sup> In order to receive unemployment benefits, an applicant must, among other things, be both "available for suitable employment," and "actively seeking suitable employment." Minn. Stat. § 268.085, subd. 1 (2012). "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) (2012).

We review de novo the legal conclusion that an applicant is ineligible to receive unemployment benefits. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010). The questions of whether an applicant is available for, and actively seeking, suitable employment are factual determinations. *Goodman v. Minn. Dep't of Emp't Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977) (availability); *McNeilly*

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<sup>1</sup> Relator makes several arguments that relate to whether she voluntarily terminated her employment or not. The determination of ineligibility from which relator appealed listed "educational wage" and the circumstances surrounding the termination of relator's employment as "other pending issues" affecting relator's eligibility for unemployment. But the ULJ's order in this case only relates to whether relator was available for and actively seeking employment. Thus, these arguments are beyond the scope of this appeal.

*v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 711–12 (Minn. App. 2010) (actively seeking). This court reviews the ULJ's factual findings in the light most favorable to the decision and will not disturb those findings as long as the evidence substantially sustains them. *Grunow*, 779 N.W.2d at 580.

“Available for suitable employment” means an applicant is ready, willing, and able to accept suitable employment. The attachment to the work force must be genuine. An applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.

Minn. Stat. § 268.085, subd. 15(a) (2012). However, “[a]n applicant who is absent from the labor market area for personal reasons, other than to search for work, is not available for suitable employment. *Id.*, subd. 15(c) (2012). “Labor market area” is an ambiguous term, defined with reference to the “surrounding circumstances,” such that the area included in that term may vary from worker to worker and industry to industry. *Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 69 (Minn. App. 2008), *review dismissed* (Minn. July 6, 2009).

The ULJ found that relator's labor market area was in Iowa. Relator testified that she would have accepted a position in Minnesota had she been offered employment, but she also clearly expressed a preference to move permanently to Iowa. While we note that relator's willingness to accept employment in Minnesota appears to have been genuine, relator consistently stated that she intended to move to Iowa and was clear that she was primarily looking for work in Iowa. Thus, there is substantial evidentiary support for the ULJ's finding that the area around Waterloo, Iowa, was relator's labor market area and

that during the time period from August 5 to August 11, 2012, and from September 17 through the date of the hearing, when she was in Minnesota, she was not available for employment in her labor market area.

We now turn to the factual determination of whether relator was actively seeking suitable employment.

“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. 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) (2012). There is no bright-line definition of what constitutes actively seeking suitable employment, but Minnesota caselaw indicates 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 Pyeatt v. State, Dep’t of Emp’t Servs.*, 263 N.W.2d 394, 395 (Minn. 1978) (holding that the relator’s job search was inadequate when he applied for six or seven positions over an eight-month period); *Monson v. Minn. Dep’t of Emp’t Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (holding that applicant was not actively searching for suitable employment in a two-month period where he researched a data bank for employment opportunities, regularly consulted professional journals and newspaper employment notices, and made two or three unsuccessful applications for positions in his field, but had not explored other

possible positions and had signed up for retraining as an auto mechanic); *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”); *James v. Comm’r of Econ. Sec.*, 354 N.W.2d 840, 841–42 (Minn. App. 1984) (concluding that relator who, during a three-week period, made phone contact with four employers and visited the job-service office twice was not actively seeking suitable employment), *review denied* (Minn. Dec. 20, 1984). However, when an applicant made “multiple telephone and in-person ‘networking’ contacts with five prospective employers [two of which reached a network of over 100 publications] . . . had formal interviews with one employer . . . interviewed for an out-of-town position,” and attempted to become self-employed over an 11-week period, this court concluded that the applicant had been actively seeking employment. *Decker v. City Pages, Inc.*, 540 N.W.2d 544, 549–50 (Minn. App. 1995).

In this case, relator testified that she applied for about 15 jobs over approximately eight weeks (August 5 to October 1, 2012), for an average of approximately two applications per week. This resulted in three interviews. Relator testified that she looked online and in the newspaper, networked with friends, sought an internship through her academic program, and visited a workforce center. However, relator testified that she only spent two hours per day looking for work and acknowledged that she had not sought to sign up with a temporary employment agency.

The applicable standard of review for the determination of an adequate job search is whether the evidence substantially sustains the ULJ’s findings. *Grunow*, 779 N.W.2d

at 580. Based upon this record, where the relator only submitted an average of two applications per week over an eight-week period, we conclude that there is substantial evidence supporting the ULJ's conclusion that she was not actively seeking suitable employment.<sup>2</sup> Because there is evidence in the record which substantially supports the ULJ's finding that relator was not actively seeking suitable employment, we affirm the denial of unemployment benefits.

**Affirmed.**

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<sup>2</sup> Relator stated in her brief that she “spend[s] five hour[s] or more looking for work per day.” To the extent that this evidence differs from relator's previous testimony, it is new evidence, and is not considered on appeal. *See Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990).