

No. A13-1007

State of Minnesota
In Court of Appeals

AUGUST L. NEUMANN,

Relator,

vs.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

AUGUST L. NEUMANN

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUE

In order to be eligible for unemployment benefits for any week, an applicant must be available for, and actively seeking, suitable employment. An applicant must be present in his labor market area and must undertake reasonable and diligent efforts to obtain suitable employment. August Neumann was absent from his labor market area for personal reasons on February 6 and February 7. In addition, after establishing his benefit account on January 6, 2013, Neumann spent only one hour per day looking for work, and after mid-February 2013, he spent only one-half of an hour each day looking for work. Was Neumann available for, and actively seeking, suitable employment?

Unemployment Law Judge Christopher Cimafranca held that Neumann was not available for suitable employment February 6 and February 7, 2013, and that he was not actively seeking suitable employment beginning January 6.

STATEMENT OF THE CASE

The issue here is whether Neumann is eligible for unemployment benefits. Neumann established a benefit account with the Minnesota Department of Employment and Economic Development (Department) on January 6, 2013. A Department administrative clerk determined that Neumann was ineligible for benefits beginning February 3, because he was unavailable for suitable employment.¹ Neumann appealed, and ULJ Cimafranca conducted a de novo

¹ E-1. Exhibits in the brief will be indicated "E" with the number following.

hearing. The ULJ found that from February 6, 2013 to February 7, 2013, Neumann was not available for suitable employment because he was outside of his labor market area.² The ULJ also found that beginning January 6, 2013, Neumann was not eligible for unemployment benefits because he was not actively seeking suitable employment.³ Neumann filed a request for reconsideration with the ULJ, who affirmed.⁴ This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Neumann under Minn. Stat. § 268.105, subd. 7(a) (2012) and Minn. R. Civ. App. P. 115.

Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not by an employer or from employer funds.⁵ The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁶ Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and

² Appendix to Department's Brief, A4-A8.

³ Appendix, A4-A8.

⁴ Appendix, A1-A4.

⁵ Minn. Stat. § 268.069, subd. 2 (2012); *N.L.R.B. v. Gullett Gin Co.*, 340 U.S. 361, 364 (1951) ("Payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state."); *see also New York Tel. Co. v. New York Dep't of Labor*, 440 U.S. 519, 534 (1979); *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); *Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951) (recognizing that unemployment benefits are paid from state funds).

⁶ Minn. Stat. § 116J.401, subd. 1(18) (2012).

not from employer funds.⁷ The Department's interest therefore carries over to the Court of Appeals' interpretation and application of the Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an unemployment law judge's decision.⁸

STATEMENT OF FACTS

Neumann established an unemployment benefit account effective January 6, 2013, after losing his job installing security systems for Vinco.⁹ Neumann began looking for a new job, and he spent approximately one hour each day searching for employment.¹⁰ Neumann looked for work online and in the newspaper, and he would occasionally call employers or visit businesses in person.¹¹ Neumann checked in for jobs at a gas station, a grocery store, an auto body shop, and an exhaust shop.¹² But Neumann spent a majority of his time working on obtaining his commercial driver's license by studying for the driver's test.¹³ On February 3, 2013,¹⁴ Neumann drove his father from his home in

⁷ Minn. Stat. § 268.069, subd. 2 (2012); *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); *see also Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951). Unemployment benefits are paid from state funds, even though taxes paid by employers helped create the fund.

⁸ Minn. Stat. § 268.105, subd. 7(e) (2012).

⁹ T. 9, 10; Transcript references will be indicated "T" with the number following.

¹⁰ T. 18.

¹¹ T. 19.

¹² T. 17-18.

¹³ T. 18.

¹⁴ Neumann could not recall the specific date that he drove to Madison. But he did testify that a Department representative called him as he was driving to Madison, showing that this trip occurred during the work week.

Frederick, Wisconsin, to Madison, Wisconsin, because he “ha[d] nothing else better to do.”¹⁵ The drive took about four hours, and Neumann stayed in Madison, “watching TV” until he drove his father home the following day.¹⁶

In mid-February, Neumann received a call from Vinco, asking what he was going to be doing around the beginning of April.¹⁷ Neumann took that phone call to mean that he would be starting work again around that time, and he “slowed a little bit” with his job-search efforts.¹⁸ Despite no specific call-back date, Neumann reduced his work search to about 30 minutes per day.¹⁹ He spent most of his time working on obtaining his commercial driver’s license, and for his work search, he would just “open up the . . . paper, look[] around, call[] around.”²⁰ As of the date of the hearing, Neumann had not been called back to his former job, nor did he know when he would be starting work again.

STANDARD OF REVIEW

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Neumann’s substantial rights may have been prejudiced because the

¹⁵ T. 12.

¹⁶ T. 13.

¹⁷ T. 16.

¹⁸ T. 16.

¹⁹ 21.

²⁰ T. 20-21.

decision of the ULJ was based on an unlawful procedure, affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious.²¹

There is no presumption of eligibility for unemployment insurance benefits.²² Eligibility is decided under a preponderance-of-the-evidence standard, with no burden of proof assigned to any party.²³ The court views the ULJ's "factual findings in the light most favorable to the decision," and will not disturb the findings when the evidence substantially sustains them.²⁴ "Substantial evidence" is the relevant evidence that "a reasonable mind might accept as adequate to support a conclusion."²⁵ But whether, in light of the facts, an applicant for unemployment benefits is eligible is a question of law, which the Court reviews de novo.²⁶

ARGUMENT FOR INELIGIBILITY

Neumann seeks unemployment benefits, which are paid from state funds, not employer funds.²⁷ Benefits are payable from the trust fund only if an applicant

²¹ Minn. Stat. § 268.105, subd. 7(d)(1)-(6).

²² Minn. Stat. § 268.069, subd. 2.

²³ Minn. Stat. § 268.101, subd. 2(e); Minn. Stat. § 268.031, subd. 1.

²⁴ *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2011) (citing *Jenkins v. Am. Express*, 721 N.W.2d 286, 289 (Minn. 2006)).

²⁵ *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

²⁶ *Ress v. Abbott Northwestern Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989); *Bukkuri v. Dept. of Emp't and Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007).

²⁷ Minn. Stat. § 268.069, subd. 2. See also *Jackson v. Honeywell*, 47 N.W.2d 449, 451 (Minn. 1951).

is available for, and actively seeking, suitable employment.²⁸ In order to be “available for suitable employment,” the statute requires that an applicant be “ready and willing 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.”²⁹ In addition, the statute provides that “[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.’”³⁰

Here, the ULJ found that Neumann was outside of his labor market when he visited Madison, Wisconsin, with his father for two days in February 2013. Neumann testified that he lives in Fredrick, Wisconsin, which is four hours away from Madison, and that while he was there, he was “watching TV” and he made no mention of looking for work in Madison. The preponderance of the evidence shows that for those two days in February 2013, Neumann was absent from his labor market area for personal reasons. Neumann does not contest this on appeal. The statute requires that those receiving unemployment benefits be available for suitable employment, meaning that they be present in their labor market area. Unemployment benefits do not subsidize an individual for periods of time when he is not available to accept a job in his labor market. Therefore, the ULJ correctly

²⁸ Minn. Stat. § 268.085, subd. 1.

²⁹ Minn. Stat. § 268.085, subd. 15(a).

³⁰ Minn. Stat. § 268.085, subd. 15(c).

concluded that Neumann was not available for suitable employment on February 6, 2013 and February 7, 2013.

In addition to not being available for suitable employment, Neumann was also not actively seeking suitable employment. The statute defines “actively seeking suitable employment” to mean

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.”³¹

Whether an applicant is actively seeking suitable employment is a question of fact.³²

The law does not dictate a specific amount of time or specific job-search methods that an applicant must carry out. However, the statute requires that those who collect benefits funded by public dollars will dutifully and seriously undertake a search for work, and that searching for work will essentially become that unemployed applicant’s full-time job. In addition, the statute requires that an applicant undertake a diligent search that an individual in similar circumstances would make if genuinely interested in obtaining suitable employment. There is little case law on what constitutes a diligent work search. Diligence is difficult to

³¹ Minn. Stat. § 268.085, subd. 16(a).

³² See *McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 711 (Minn. App. 2010) (reviewing the actively-seeking issue for substantial evidence).

judge, but a reasonable person making diligent efforts to find a job would do significantly more than look online, look in the newspaper, and occasionally visit businesses for only one hour per day. A reasonable person genuinely interested in obtaining suitable employment would spend more time looking for a job than he spends studying for a commercial driver's license.

Neumann's efforts were minimal and certainly not energetic. At the time of the hearing, Neumann testified that he spent about one hour per day looking for work from January 6, 2013 to about mid-February, and then after that, he spent 30 minutes each day looking for a job. Neumann looked on Craigslist, opened the newspaper, and occasionally visited and called businesses, but his testimony shows that he spent more time working on obtaining a commercial driver's license than he did seeking new work. Even though Neumann anticipated returning to his previous employer in the spring, the fact that he was on a seasonal layoff does not negate the requirement that he engage in active work-search efforts during the off season.³³ The ULJ's finding of fact that Neumann was not actively seeking suitable employment is supported by substantial evidence in the record, evidence that Neumann does not contest on appeal.

The legislature has chosen to require an active, fairly vigorous job-search process for those who are collecting benefits, and the ULJ correctly concluded in

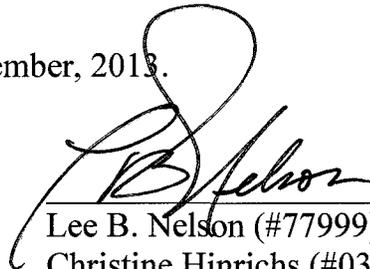
³³ *McNeilly*, 778 N.W.2d at 711 (“Nothing in the statute exempts seasonal employees from the unemployment-benefits requirements.”).

this case that Neumann's job search did not meet the standard the legislature set. The ULJ properly found that Neumann was not actively seeking employment.

CONCLUSION

Substantial evidence supports the Unemployment Law Judge's decision that August Neumann was not available for suitable employment from February 6, 2013, to February 7, 2013, because he was out of his labor market area for personal reasons and that he was not actively seeking suitable employment beginning January 6, 2013. The Department asks that the Court affirm the decision of Unemployment Law Judge.

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