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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1138**

Jerry L. LaMaack,  
Relator,

vs.

Adecco USA Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 15, 2008  
Reversed  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 4107 07

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Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and  
Worke, Judge.

## UNPUBLISHED OPINION

LANSING, Judge

An unemployment law judge determined that Jerry LaMaack was ineligible for unemployment benefits for eight weeks because he refused suitable employment without good cause. Because the findings of fact do not, as a matter of law, support the conclusion that the employment was suitable, we reverse.

### FACTS

Jerry LaMaack has more than thirty-six years of accounting experience. During his career, he has held positions as a staff accountant, senior staff accountant, accountant manager, and corporate controller. Between 2004 and 2006, LaMaack was employed as a senior staff accountant at Stauber and Associates, a public accounting firm.

LaMaack testified that he left Stauber and Associates to obtain a position with health benefits. As a result, in April 2006, LaMaack accepted a temp-to-hire position through Adecco USA Inc., located at Alfred's, a clothing and furniture retailer. But when LaMaack learned, in December 2006, that Alfred's would be closing at the end of the month, he contacted Adecco about finding another position. Adecco arranged for an interview for a bookkeeper position at Ace Worldwide Moving, and LaMaack was offered a job. LaMaack rejected the job offer and then applied for unemployment benefits when Alfred's closed.

Adecco challenged LaMaack's application for unemployment benefits on the basis that he had declined an offer of suitable employment without good cause. A Department

of Employment and Economic Development adjudicator initially determined that the position was not suitable and granted LaMaack unemployment benefits.

Adecco appealed this decision and an unemployment law judge (ULJ) held an evidentiary hearing. At the hearing, LaMaack testified that at Alfred's he was an accountant, responsible for preparing financial statements and updating all company accounting. He testified that the Ace position he was offered would involve significant customer-service work and "was more of a bookkeeper type, clerk position than an accounting position." A representative from Adecco testified that both the Ace and the Alfred's positions were bookkeeper positions and involved similar duties. The type of accounting work that LaMaack was doing for Alfred's, however, was handled at Ace's home office, not at the location where LaMaack would be working.

After the hearing, the ULJ determined that the Ace position was suitable and that LaMaack was ineligible for unemployment benefits for eight weeks because he rejected the offer. After LaMaack requested reconsideration, the ULJ affirmed and LaMaack now appeals by writ of certiorari.

## **D E C I S I O N**

On certiorari appeal, we review an unemployment law judge's (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are in violation of a constitutional provision, in excess of statutory authority, based on procedural error, affected by error of law, unsupported by substantial evidence, or arbitrary and capricious. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ's decision). We

defer to the ULJ's assessment of credibility and resolution of conflicting testimony. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who refuses, without good cause, to accept suitable employment, is ineligible for unemployment benefits for a period of eight weeks. Minn. Stat. § 268.085, subd. 13c(a)(2) (2006). The statutory definition of "suitable employment" considers a variety of factors. *See* Minn. Stat. § 268.035, subd. 23a (2006) (defining suitable employment). In relevant part, the statute provides:

(a) Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications. In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence is considered.

(b) In determining what is suitable employment, primary 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.

If prospects are unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment considering the applicant's education, training, work experience, and current physical and mental ability.

The total compensation must be considered, including the wage rate, hours of employment, method of payment, overtime practices, bonuses, incentive payments, and fringe benefits.

*Id.* Eligibility issues are determined based on the information provided to the ULJ "without regard to any burden of proof." Minn. Stat. § 268.105, subd. 1(b) (2006).

As a preliminary matter, we must decide what standard of review to apply to the ULJ's determination that LaMaack declined suitable employment. The department

argues that suitability is purely a fact question. In previous cases, we have held that suitability involves—in part—a fact question. *See Willrich v. Top Temp., Inc.*, 379 N.W.2d 731, 732 (Minn. App. 1986) (treating question of whether offer was made as fact question); *Hogenson v. Brian Knox Builders*, 340 N.W.2d 360, 363 (Minn. App. 1983) (remanding for suitability determination because it involved fact issues). But nothing in these cases indicates that we should defer to the ULJ’s interpretation of the statute itself. Thus, although we must review the ULJ’s findings of fact for substantial evidence, we review de novo the legal question of suitability as applied to particular facts. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (stating de novo standard of review for determining whether particular act is employment misconduct).

In this case, the ULJ found some similarities between LaMaack’s position at Alfred’s and the position he was offered at Ace. The ULJ found that the “job title, hours, and wages for the Ace Worldwide assignment were substantially the same as the previous assignment to Alfred’s” and that an Adecco employee “testified that both Alfred’s and Ace Worldwide described the position as bookkeeper.”

But the ULJ also noted differences between the two positions. The ULJ found that “[a]t Alfred’s, LaMaack set up the accounts using Quickbook[s], updated the financial reports and performed cash and inventory management analysis.” The Ace position, in contrast, involved “doing payroll, accounts payable and receivable, balancing general ledgers, and answering customer questions about invoices.” These findings were clearly supported by substantial evidence, which included LaMaack’s testimony that ninety

percent of his job responsibilities at Ace would involve collecting freight invoices and answering customer inquiries about freight issues.

Despite the differences between the two positions, the ULJ concluded that the Ace position constituted suitable employment for LaMaack. In reaching this conclusion, the ULJ emphasized that the “job title, hours, and wages for the Ace Worldwide assignment were substantially the same as the previous assignment to Alfred’s.” Although the ULJ acknowledged that the “specific accounting activities may have differed,” the ULJ noted that “LaMaack had training and experience in performing most of them.”

We conclude, however, that the ULJ’s findings of fact compel the opposite result. Under the statute, suitable employment must be “reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a). In evaluating the relationship between the employment and the applicant’s qualifications, we consider a number of factors, such as prior training and experience. *Id.*

Under the circumstances, the ULJ’s findings on LaMaack’s job title, hours, and wages do not establish that the Ace position was reasonably related to LaMaack’s qualifications. The title of “bookkeeper” could be applied to a wide variety of accounting jobs and does not indicate that the work involved would be appropriate in light of LaMaack’s accounting degree and thirty-six years of accounting experience. Similarly, the ULJ’s finding about LaMaack’s training and experience does not establish a reasonable relationship. The fact that LaMaack had training and experience in less sophisticated accounting duties does not establish a reasonable relationship between those duties and his current qualifications.

The ULJ's findings about the nature of the work at Ace indicate that the Ace position, as a matter of law, lacks the reasonable relationship to LaMaack's training and experience that would qualify it as suitable employment. Accounting positions are not all the same. At LaMaack's previous job, he prepared financial reports and performed cash and inventory management analysis. The Ace position, in contrast, would have plainly involved clerk duties, such as payroll, accounts receivable, accounts payable, balancing ledgers, and a substantial percentage of time devoted to collecting freight invoices and answering customer-service questions. In fact, the record indicates that the position would primarily involve working with customers. In light of LaMaack's accounting degree, thirty-six years of experience, and prior employment, we see no basis for concluding that the accounting-clerk duties at Ace were reasonably related to his qualifications.

We recognize that the statute provides that when an employee's prospects for securing employment at his or her skill level are not favorable within a reasonable period of time, employment at a lower skill level may be considered suitable. Minn. Stat. § 268.035, subd. 23a(b). But the record contains no indication that LaMaack had unfavorable prospects of obtaining employment at his skill level. To the contrary, he had not even officially completed his work with Alfred's at the time Ace offered him the position, and he ultimately obtained a position at his appropriate skill level within a short time.

The ULJ's own findings of fact indicate that the Ace position was not reasonably related to LaMaack's qualifications. These particular findings were strongly supported

by the evidence produced at the hearing. Accordingly, we conclude that the Ace position, as a matter of law, was not suitable employment. We therefore reverse the ULJ's decision that found LaMaack ineligible for unemployment benefits for eight weeks.

**Reversed.**