

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1548**

Jeffrey C. O'Brien,
Relator,

vs.

Aerotek Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 19, 2008
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 5471 07

Jeffrey C. O'Brien, 5751 Vincent Avenue South, Minneapolis, MN 55410-2628 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Muehlberg, Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Relator Jeffrey O'Brien challenges an unemployment law judge's decision that O'Brien lacked good cause to reject an offer of suitable employment and was therefore ineligible for unemployment benefits for eight weeks. He also challenges the judge's denial of his request for a new evidentiary hearing. Because rejecting an offer of suitable employment to wait for a better opportunity does not constitute good cause, and because O'Brien failed to demonstrate that an additional evidentiary hearing was necessary, we affirm.

FACTS

Jeffrey O'Brien is an unemployed architect who refused an employment offer, which led the Minnesota Department of Employment and Economic Development (DEED) to conclude that he was not eligible for unemployment benefits for an eight-week period. O'Brien has been an architect since 1991 in a variety of "temp-to-hire" positions. On September 10, 2006, O'Brien established an unemployment-benefits account after one of his temporary assignments ended. At that time, O'Brien earned an annual salary of \$60,000.

O'Brien's job search left him with a risky option in early 2007. In October 2006, O'Brien had contacted Brown Connally Rowan Akiyama (BCRA), an architectural firm in Tacoma, Washington, to discuss the prospect of his employment. O'Brien and BCRA corresponded throughout January and February 2007, and O'Brien agreed to interview at the firm on February 21, 2007. While corresponding with BCRA, O'Brien also contacted

Aerotek, Inc., an employment placement service in Minnesota. Meanwhile, on February 16, 2007, Aerotek offered O'Brien a nine-month, "temporary-to-permanent" assignment with Boarman Kroos Vogel Group, an architectural firm. The job was scheduled to begin February 19, 2007, with a starting annual salary of \$65,000. O'Brien informed Aerotek of his pending interview with BCRA, and Aerotek agreed to hold its offer open for one week. O'Brien interviewed at BCRA on February 22, and BCRA told him it would make a decision in one week. O'Brien therefore had to choose between accepting Aerotek's job offer or rejecting it, hoping for a better offer from BCRA. On February 23, 2007, O'Brien declined Aerotek's job offer. The gamble failed: BCRA's offer never came.

On April 4, 2007, DEED notified O'Brien that he was not eligible for unemployment benefits for a period of eight weeks because he refused an offer of suitable employment without good cause. O'Brien appealed, and a ULJ conducted a telephone hearing in which only O'Brien participated. The ULJ upheld DEED's ineligibility decision.

O'Brien requested reconsideration, providing for the first time copies of email correspondence between O'Brien and BCRA regarding the possible job offer. He also submitted a compensation report for determining salaries at BCRA. The ULJ decided not to consider the documents because they were not made part of the record at the original hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (Supp. 2007) (stating that when deciding a request for reconsideration, ULJ shall not consider any new evidence except to determine whether to order a new evidentiary hearing). He reasoned that the new information

would not change the outcome of the decision or show that likely false information affected the outcome of the decision. The ULJ affirmed his prior decision that O'Brien is ineligible for benefits. O'Brien appeals by writ of certiorari.

DECISION

On certiorari appeal, we review an unemployment law judge's decision to determine whether the applicant's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are (1) in violation of a constitutional provision; (2) in excess of statutory authority; (3) based on procedural error; (4) affected by error of law; (5) unsupported by substantial evidence; or (6) arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). We defer to the ULJ's credibility assessment. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). O'Brien challenges the ULJ's ineligibility determination and the ULJ's decision not to conduct a second hearing to reopen the record for the submission of new evidence.

I

We first consider the ULJ's ineligibility determination. If an applicant for unemployment benefits refuses to accept suitable employment without good cause, the applicant is disqualified from receiving unemployment benefits for a period of eight weeks. Minn. Stat. § 268.085, subd. 13c(a)(2) (Supp. 2007). O'Brien does not dispute that Aerotek offered him a position of suitable employment. *See* Minn. Stat. § 268.035, subd. 23a(a) (Supp. 2007) (defining suitable employment as "employment in the applicant's labor market area that is reasonably related to the applicant's qualifications"). He argues instead that he had good cause to reject the offer because he had an "implied

offer” from BCRA. When a potential employer makes a suitable offer of employment, the applicant who rejects the offer becomes ineligible for unemployment benefits unless he has good cause to reject the offer. See *Lewis v. Minneapolis Moline, Inc.*, 288 Minn. 432, 435–36, 181 N.W.2d 701, 704 (1970). Whether O’Brien had good cause to reject Aerotek’s offer of suitable employment is a question of law, which this court reviews de novo. See *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996).

The ULJ properly determined that O’Brien lacked good cause to reject the Aerotek offer. “Good cause” is a basis that would cause a reasonable individual to decline or avoid suitable employment, including the applicant’s securing of other suitable employment, the applicant’s participation in reemployment training, the intervention of a labor dispute, or the fact that the applicant formerly worked for the employer and quit for good reason caused by the employer. Minn. Stat. § 268.085, subd. 13c(b). O’Brien has not presented evidence meeting this definition. Aerotek offered O’Brien a temporary assignment on February 16, 2007. The assignment was scheduled to begin February 19, was described as potentially leading to permanent employment, and the salary was more than O’Brien had earned in his preceding position. Although the offer was for suitable employment, O’Brien argues that he had good cause to reject it because he might face an ethical dilemma by receiving a better offer from BCRA, which he predicted based on what he calls BCRA’s “implied offer.” He maintains that he chose to avoid risking damage to Aerotek’s good will with their client, to his own reputation, and to the financial interests of Aerotek’s client, because he anticipated resigning from Aerotek to accept BCRA’s offer. O’Brien testified that he received oral confirmation from BCRA’s

human resources director and written confirmation from BCRA's president that BCRA was preparing an offer. He therefore rejected Aerotek's offer after he returned from what he thought was a successful interview with BCRA. O'Brien adds that the BCRA terms would have been better than those in Aerotek's offer.

We conclude that the ULJ accurately assessed the nature of O'Brien's "implied offer." Although O'Brien communicated with BCRA for several months and had reason to expect an employment offer, he had not received an actual offer of employment when he rejected Aerotek's offer. O'Brien's "implied offer" certainly was not an actionable offer of employment; O'Brien does not allege, nor could he contend on these facts, that he was ever in a position that entitled him to accept a position of employment with BCRA based on an offer, "implied" or otherwise. We need not address whether receiving a job offer of other suitable employment constitutes securing other suitable employment under section 268.085, subdivision 13c(b), since O'Brien's "implied offer" was no job offer. The ULJ found that a reasonable applicant would accept "suitable employment . . . rather than decline the offer with the hope that a better offer might arise." Caselaw supports this conclusion. *See Preiss v. Comm'r of Econ. Sec.*, 347 N.W.2d 74, 77 (Minn. App. 1984) (finding no good cause when relator argued she had refused a job offer because she was waiting for a better opportunity). We do not suggest that it was at all improper for O'Brien to consider the moral issue of joining but then quickly abandoning Aerotek and the possible impact on the company and his own integrity if the hoped-for BCRA offer materialized. But neither O'Brien's moral conflict nor his job-preference conflict constitutes a statutory basis for an applicant to remain

eligible for unemployment benefits after rejecting suitable employment. The ULJ did not err when he found that O'Brien lacked good cause to reject the Aerotek offer of suitable employment.

II

We turn to the ULJ's decision not to conduct a new hearing to consider O'Brien's new evidence. When deciding a request for reconsideration, the ULJ may not consider evidence that was not submitted at the evidentiary hearing except to determine whether to order an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2007). An additional evidentiary hearing must be ordered if a party shows that the new evidence either would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence, or it would show that the evidence previously submitted was likely false and affected the decision. *Id.*

With his request for reconsideration, O'Brien submitted a copy of email correspondence he had with BCRA about the offer negotiations and a compensation table. If considered, the documents would have supported O'Brien's testimony that he had been discussing an offer with BCRA. But the ULJ reasonably found that this evidence would not likely change the outcome of the decision because it had no bearing on whether O'Brien had good cause to reject Aerotek's offer while waiting to hear definitively from BCRA. It is clear that the documents could not prove the existence of an offer and acceptance of suitable employment. They would establish only that O'Brien was in discussions to obtain employment. This was neither in dispute nor relevant. The

ULJ did not err by denying O'Brien's request for a new evidentiary hearing to consider the new evidence.

Affirmed.