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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1325**

David Andrews,
Relator,

vs.

The Work Connection, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed May 23, 2011
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 24782706-3

David Andrews, South Haven, Minnesota (pro se relator)

The Work Connection, Inc., St. Paul, Minnesota (respondent)

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

Considered and decided by Hudson, Presiding Judge; Toussaint, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the determination of an unemployment-law judge that he is ineligible for unemployment-insurance benefits for a period of eight weeks because he failed to accept offers of suitable employment. Because the decision is supported by substantial evidence, we affirm.

FACTS

Between April and December 2009, relator David Andrews performed three assignments for The Work Connection (TWC), a temporary staffing agency. After completing his final assignment, relator established an unemployment-benefit account. This case arises from relator's subsequent failure to respond to three offers of employment by TWC.

At the time relator was hired, relator provided TWC with his wife's cellular telephone number as his contact information. TWC contacted relator at this number several times to offer him assignments, and relator received and accepted three assignments at this number in April, June, and July 2009. At no time did relator inform TWC of any changes to his contact information.

On January 8, March 3, and March 9, 2010, TWC called relator at his wife's cellular telephone number to offer him an assignment. Each time, TWC left relator at least one voicemail message and then sent the offer by regular and certified mail. Relator did not respond to any of the offers. Relator admits that he still lives with his wife, he

has not experienced any interruptions in mail service, and he has received other voicemail messages at his wife's telephone number and written correspondence from TWC. But relator maintains that he did not receive TWC's voicemail messages or written offers for assignments between January and March of 2010.

Because relator was aware of, and failed to accept, the offers of employment from TWC, the Minnesota Department of Employment and Economic Security (DEED) notified relator that he was not eligible for unemployment-insurance benefits for a period of eight weeks. Relator appealed, and an unemployment-law judge (ULJ) conducted a telephone hearing, during which relator and TWC's human-resources director and area manager appeared. The ULJ found that relator's account was not credible and upheld the ineligibility determination.

Relator filed a motion for reconsideration in which he reiterated that he had not received TWC's offers of employment and stated for the first time that he had a leg injury that prevented him from accepting the assignments that TWC offered. The ULJ denied relator's motion for reconsideration, finding that relator was not entitled to an additional evidentiary hearing to offer evidence of his injury. This certiorari appeal follows.

DECISION

This court may remand, reverse, or modify a decision of the ULJ if substantial rights of the applicant were prejudiced because the findings, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). We review a ULJ's factual findings in the light most favorable to the decision and will not disturb them when they are sustained by substantial

evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review de novo a ULJ's determination that an applicant is ineligible for unemployment benefits. *Sykes v. Nw. Airlines*, 789 N.W.2d 253, 255 (Minn. App. 2010).

Relator contends that he had good cause for not accepting TWC's offers, namely because he did not receive them and because he was injured. An applicant is ineligible for all unemployment benefits for a period of eight weeks if the applicant avoided or refused an offer of suitable employment without good cause. Minn. Stat. § 268.085, subds. 13c(a)(2)–(3) (2008). “Good cause” is defined as “a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment.” *Id.*, subd. 13c(b) (2008).

First, relator challenges the ULJ's finding that he received TWC's offers and the legal determination that he lacked good cause for not accepting them. In making her findings, the ULJ pointed out the following admissions by relator: (1) his telephone number and address had not changed since he provided it to TWC; (2) his mail service had never been interrupted; and (3) he had received voicemails and correspondence from TWC in the past. Based on these admissions, the ULJ found incredible relator's claim that he did not receive the numerous voicemail messages and written correspondence from TWC offering him additional assignments. The ULJ was entitled to make this credibility determination and to conclude that relator lacked good cause for not accepting the positions offered by TWC. *See Skarhus*, 721 N.W.2d at 344 (stating that this court defers to the ULJ's credibility determinations).

Next, relator argues that the ULJ should have found that he was injured and that his injury provided good cause for not accepting TWC's offers. But at the evidentiary hearing, relator did not present any evidence that he had an injury, let alone that it prevented him from accepting TWC's offers; instead, he testified that he never received these offers. Relator first mentioned that he was injured in his request for reconsideration, and he did not present any medical documentation of his injury until he filed this appeal.

In deciding a request for reconsideration, the ULJ cannot consider evidence that was not submitted at the evidentiary hearing except for the purpose of determining whether to order an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009). Additionally, the ULJ is not required to order an additional evidentiary hearing unless (1) there is good cause for the failure to submit the evidence at issue and (2) there is a likelihood that the evidence would change the ULJ's decision. *Id.*, subd. 2(c)(1). Relator does not appear to be challenging the ULJ's denial of his motion for reconsideration, but even if he were, he would be unsuccessful because the ULJ determined, and the record demonstrates, that relator provided no explanation for why he failed to produce evidence of his injury at the evidentiary hearing.

Also, this court cannot consider evidence that was not received by the ULJ at the evidentiary hearing. *Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990). On appeal, relator has presented a letter from his physician stating that relator fractured his left tibia on February 7, 2010. Because this letter was not received into evidence by the ULJ, this court cannot consider it.

Affirmed.