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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1698**

Sabrena Hildreth,
Relator,

vs.

Robert Half Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 11, 2011
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 25343224-3

Sabrena J. Hildreth, Bloomington, Minnesota (pro se relator)

Robert Half Corporation, San Ramon, California (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and
Collins, 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UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Sabrena Hildreth challenges an unemployment-law judge's determination that she is ineligible for unemployment benefits, arguing that she did not fail to apply for or refuse an offer of suitable employment and that she was not afforded a fair hearing. We affirm.

DECISION

I.

We may affirm the decision of the unemployment-law judge (ULJ), remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2010). We view the ULJ's factual findings in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an applicant is disqualified from receiving benefits is a question of law, which we review de novo. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

An applicant for unemployment benefits is ineligible for benefits for eight calendar weeks if the applicant, without good cause, "failed to apply for available, suitable employment of which the applicant was advised by . . . an employer; . . . [or] avoided an offer of suitable employment." Minn. Stat. § 268.085, subd. 13c(1), (3)

(2010). Employment is suitable if it is within the applicant's labor market area and reasonably related to the applicant's qualifications, taking into account the applicant's 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. Minn. Stat. § 268.035, subd. 23a(a) (2010).

Relator worked as an accounting clerk in various temporary positions for respondent Robert Half Corp. beginning in 2005. She received between \$12 and \$14 an hour for all but one of her temporary assignments. Relator completed a six-month assignment, which paid \$13.34 an hour, on April 30, 2010. On May 20, 2010, a staffing manager called relator and asked her if she was interested in a position as an accounting clerk that was expected to become permanent in 60 to 90 days. The hourly wage started at \$13.85 and was scheduled to increase to \$14 if the position became permanent. Relator stated to respondent Minnesota Department of Employment and Economic Development that she told the manager she was interested in the position on a temporary basis but could not accept it permanently unless she was paid at least \$16 an hour. Relator testified that the manager told her he would see if the wages were negotiable and get back to her. The record indicates that Robert Half subsequently selected three other employees to present as applicants and did not include relator as a candidate for the position.

Relator first argues that she never received an actual offer of employment. But an applicant is ineligible for benefits for eight weeks if the applicant failed to apply for available suitable employment of which she was advised, or avoided an offer of suitable

employment; rejection of a firm offer is not required. Minn. Stat. § 268.085, subd. 13c(1), (3). Relator agrees that the staffing manager contacted her about the available position. And it is undisputed that the employment was near relator's residence, that the job was similar to her previous assignments and closely related to her accounting degree, that the wage was more than that of her most recent temporary assignment, and that the wage was at the upper end of her five-year earnings history with Robert Half. As such, the position constituted suitable employment and failure to apply would result in ineligibility.

Relator next argues that her request for the staffing manager to negotiate the wages did not constitute a refusal to apply for the position. But the record demonstrates that relator refused to fill the position permanently at the wage offered and that the client intended the position to become permanent. By rejecting the terms of the position, relator refused to apply for the position as presented. *See Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996) (concluding that applicant failed to apply for suitable work when employer told him that other job assignments were available but applicant refused to meet with employer to discuss them).

Finally, relator argues that she had good cause to refuse to apply for the suitable employment. Good cause "is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment." Minn. Stat. § 268.085, subd. 13c(b) (2010). Relator explained that she did not want to be locked into a pay rate of \$14 an hour permanently and that she would be reluctant to leave the position for a higher-paying job because she believed leaving would damage

Robert Half's reputation and her reputation. Relator may have had valid personal reasons for holding out for a better position, but public unemployment benefits are not available for an applicant who rejects an offer of suitable employment in order to wait for a better opportunity. *See Preiss v. Comm'r of Econ. Sec.*, 347 N.W.2d 74, 77 (Minn. App. 1984) (concluding that waiting for better opportunity does not constitute good cause).

II.

Relator argues that she was deprived of a fair hearing when the ULJ interfered in her examination of her employer's representative and failed to require the staffing manager to be present. Appellate review of an error alleged by relator is only appropriate if the error affects her right to unemployment benefits. *See Minn. Stat. § 268.105*, subd. 7(d) (2010) (authorizing this court to reverse or modify a decision only if relator's substantial rights may have been prejudiced); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, the appellant must show both error and prejudice resulting from the error).

Relator first argues that the ULJ should have required Robert Half's representative to answer a question about whether relator's personnel file reflected her request to negotiate the pay or her willingness to take the position on a temporary basis. But the uncontested facts are sufficient to show that relator is ineligible for benefits because she failed to apply for suitable employment. *See Minn. Stat. § 268.085*, subd. 13c(1).

Relator also assigns error to the ULJ's intervention when relator asked Robert Half's representative about the process of notifying applicants that they did not receive a position. Again, whether relator should have been notified that she was not presented as

a candidate is irrelevant to the determination that she failed to apply for suitable employment. She was not presented to the client because she did not accept the terms of employment as offered.

Finally, relator argues that she was not able to fully present her case because the staffing manager did not participate in the hearing. But the facts relator states that she could not present because of the staffing manager's absence—whether the manager agreed to try to negotiate for her, when relator obtained her accounting degree, and whether the manager would have recommended her for the position—do not affect her ineligibility. Because these alleged errors do not affect relator's eligibility for benefits, they are not prejudicial and are inappropriate for our review.

Affirmed.