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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-691**

Adam Schreifels,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed February 6, 2012
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 26653793-3

Adam Schreifels, Minneapolis, Minnesota (pro se relator)

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

Considered and decided by Kalitowski, Presiding Judge; Ross, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Adam Schreifels challenges the decision of an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he is not available for suitable employment and not actively seeking work. We affirm.

D E C I S I O N

When reviewing a decision of a ULJ, this court may affirm, 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 “made upon unlawful procedure, . . . affected by other error of law,” or “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2010).

Relator applied for unemployment compensation after working as a server at HMS Host Corp., doing business as Chili’s Too, from March 2000 to January 2010. Because relator was a student attending a degree program at Minneapolis Community and Technical College (MCTC), he was asked to complete a questionnaire (the January questionnaire) regarding his school schedule and his job-seeking activities. In the questionnaire, relator indicated that he was: (1) a full-time student; (2) attending school Monday through Friday; (3) not seeking work; (4) not able to seek work because his school schedule was too demanding; and (5) not willing to quit school or rearrange his class schedule to accommodate work because his academic program was highly competitive and did not offer flexible scheduling.

For reasons not fully explained in the record, relator completed a second questionnaire in February 2010 (the February questionnaire). The February questionnaire is not included in the record, but apparently relator answered the questions about his availability to work differently because the Department of Employment and Economic

Development (DEED) deemed relator eligible for unemployment compensation benefits, which he began collecting.

Subsequently, in December 2010, relator was again asked to complete the questionnaire (the December questionnaire). He indicated that he was a full-time student, but this time stated that he was: (1) attending school only on Tuesdays and Thursday evenings; (2) actively seeking work as a server or a salesperson; (3) not prevented by his school schedule from seeking work; (4) willing to quit or rearrange school to accept work; and (5) “always” able to “work around [his school] schedule” to attend work. Based on the discrepancy between the January and December questionnaires, DEED determined that relator was not available for suitable employment and deemed him ineligible for benefits as of November 14, 2010, until conditions changed. Relator appealed the ineligibility determination, and the ULJ affirmed DEED’s determination that relator was not available for suitable employment, and also determined that relator was not actively seeking work. The ULJ based his decision on a finding that relator’s responses in the December questionnaire and his testimony during the telephonic appeal hearing were not credible in light of his student status and his contradictory responses in the January questionnaire.

I.

Relator first argues that the ULJ erred by admitting the January questionnaire at the appeal hearing because it had been “voided” by DEED and DEED had not used the January questionnaire in its initial eligibility determination. We disagree.

In an unemployment-benefits appeal, the ULJ “is not bound by statutory and common law rules of evidence” and “may receive any evidence that possess probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” Minn. R. 3310.2922 (2009). There is no support in the record for relator’s claim that DEED “voided” the January questionnaire, and relator cites no legal authority indicating that the questionnaire is otherwise inadmissible in an unemployment-benefits appeal hearing. Because the January questionnaire is probative of the relationship between relator’s school schedule and his availability to work when he initially applied for benefits, the ULJ did not err in considering it.

II.

Relator argues that the ULJ failed to fully develop the record with respect to relator’s school schedule and his employment-seeking activities. A hearing to determine qualification for unemployment benefits is an evidence-gathering inquiry and the ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2010).

School Schedule

Relator first claims that the ULJ did not inquire into his school schedule for the 2010 fall semester, the relevant benefits period. But at the hearing, the ULJ introduced the December questionnaire, which included relator’s statement that he had class on Tuesdays from 1:30 p.m. to 8:30 p.m. and on Thursdays from 5:30 p.m. to 9:30 p.m. during the 2010 fall semester. Relator confirmed that this accurately reflected his class

schedule during the 2010 fall semester. Relator testified that his class schedule was becoming increasingly flexible as he progressed in MCTC's film program and that the days when he was not in class were unstructured project days that left him free to work. Therefore, the ULJ adequately developed the record as to relator's school schedule, but chose to discredit this testimony.

Job-Seeking Activities

In response to the ULJ's questioning, relator testified that he had applied at several restaurants and Target. On appeal he now argues that this was not an exhaustive list of his job-search activities and the ULJ should have supplemented the record by requesting documentation of all of his job applications. But relator could have included documentation with his request for reconsideration and asked for a new evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2010) (requiring the ULJ to order an additional evidentiary hearing if an involved party presents new evidence not submitted at the evidentiary hearing that would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence). Thus, we reject relator's contention that the ULJ did not adequately develop the record with regard to material facts.

III.

Relator argues that the ULJ's findings that he is not available for suitable employment and not actively seeking work are unsupported by the evidence. A person is eligible for unemployment benefits if, among other requirements, that person is both

“available for suitable employment” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4)-(5) (2010); *see* Minn. Stat. § 268.069, subd. 1(3) (2010).

A ULJ’s determination whether a person is actively seeking and available for suitable employment is a factual one. *Goodman v. Minn. Dep’t of Emp’t Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977). Findings of fact are viewed in the light most favorable to the ULJ’s decision, and should be reversed only if the findings are “unsupported by substantial evidence in view of the entire record as submitted.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 343-44 (Minn. App. 2006). “Substantial evidence” is relevant evidence that a reasonable person could deem adequate to support a conclusion. *Moore Assocs., LLC v. Comm’r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

In reviewing the evidence, this court defers to the credibility determinations made by the ULJ. *Skarhus*, 721 N.W.2d at 344. But where the credibility determination “has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2010). We review the ULJ’s credibility findings to determine whether they are supported by substantial evidence. *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

Available for Suitable Employment

The ULJ found that relator is not available for suitable employment. “‘Available for suitable employment’ means an applicant is ready and willing to accept suitable employment 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.” Minn. Stat. § 268.085, subd. 15(a) (2010). “Availability however, requires more than just willingness to accept suitable work. The claimant must be available in the sense that he is in a position to accept work.” *Flores v. Dep’t of Jobs & Training*, 411 N.W.2d 499, 503 (Minn. 1987).

[T]o be considered ‘available for suitable employment,’ a student who has regularly scheduled classes must be willing to discontinue classes to accept suitable employment when: (1) class attendance restricts the applicant from accepting suitable employment; and (2) the applicant is unable to change the scheduled class or make other arrangements that excuse the applicant from attending class.

Minn. Stat. § 268.085, subd. 15(b) (2010).

The ULJ found that relator “is in school full-time. He attends class on Tuesdays from 1:30 p.m. to 8:30 p.m. and Thursdays from 5:30 p.m. to 9:30 p.m. Besides class, [relator] attends project days that occupy him much of the day.” Because relator “attends class or project days most, if not all, days per week,” the ULJ concluded that relator is not available during the days and hours that are normal for his occupation. The ULJ further found that relator “is not willing to quit school or rearrange his class schedule to work full-time.”

In his amended findings, the ULJ clarified that these findings were based on relator’s statements in the January questionnaire that (1) he was “‘in school full time,’” (2) his class schedule “‘doesn’t allow [him] time to look for a new job,’” (3) he would not quit school or rearrange his classes to accommodate work, (4) “‘certain classes are only offered at certain times of the year,’” and (5) “[t]here is no room for rearranging.” And the ULJ discounted relator’s subsequent testimony to the contrary because relator

(1) denied ever submitting the January questionnaire, (2) was close to completing his program, (3) had paid more than \$2,500 per semester in tuition, and (4) felt lucky to be in the MCTC program because it is competitive. The ULJ concluded, “[c]onsidering that [relator] is involved in the same program, it is not credible that he has completely reversed his willingness to quit school to seek employment.”

Relator challenges the ULJ’s finding that he denied submitting the January questionnaire, claiming that he merely testified that he did not recall submitting it. Although relator did not deny submitting the January questionnaire at the appeal hearing, he did state in his request for appeal that he had “never stated anything differently” than that he would quit school to accept suitable employment. Thus, the ULJ’s credibility finding is supported by the record.

Because the ULJ set forth the reasons why he credited relator’s responses in the January questionnaire and discredited evidence to the contrary, and because the evidence supports the ULJ’s reasons, we defer to his credibility determination. *Skarhus*, 721 N.W.2d at 344. Relator stated in the January questionnaire that his school schedule is too demanding for him to seek or accept work and that he is not willing to quit school or rearrange his school schedule, therefore the ULJ’s finding that he is unavailable for suitable employment is supported by substantial evidence.

Actively Seeking Employment

Relator also challenges the ULJ’s determination that he was not actively seeking employment. “‘Actively seeking suitable employment’ means 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.”
Minn. Stat. § 268.085, subd. 16(a) (2010).

The ULJ acknowledged that relator testified that he applied for work “at a number of restaurant establishments” but discredited relator’s testimony because it conflicted with relator’s statement in the January questionnaire that he was not actively seeking work. The ULJ also found it unreasonable that relator would seek employment because he was close to completing the film program and had spent a significant amount of money on tuition. Here again, the ULJ’s credibility findings are supported by the record, and we defer to them. *Skarhus*, 721 N.W.2d at 344. Relator’s statement in the January questionnaire that he was not actively seeking work supports the ULJ’s finding that relator was not actively seeking work.

Affirmed.