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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1485**

Barton C. Winter,
Relator,

vs.

Data Recognition Corp. (1995),
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed May 14, 2012
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 27623854-3

Barton C. Winter, Birchwood, Minnesota (pro se relator)

Data Recognition Corp. (1995), St. Louis, Missouri, (respondent employer)

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

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges a ULJ determination that he is ineligible for unemployment
benefits for an eight-week period because he failed to accept suitable employment,

arguing that the temporary position he was offered is not suitable, based on his past employment history. We affirm.

FACTS

Relator Barton C. Winter worked as an engineer from 1985 to 1990, and as an attorney from 1997 to 2009. In August of 2009, relator was suspended from the practice of law. *See In re Winter*, 770 N.W.2d 463 (Minn. 2009). Since that time, relator has sought temporary-to-hire positions through various staffing agencies. Specifically, relator is seeking assembly and manufacturing positions, hoping to eventually transition into an engineering position after being hired by a client company.

From September 2009 to December 2009, relator worked for ProStaff Personnel Services as a clean-room assembler for client company Boston Scientific, earning \$11.45 per hour. Although the position was a temporary-to-hire position, relator was laid off after three months. In late December 2009, relator worked as a packaging-line worker for Target—again, a position arranged through ProStaff—earning \$11 per hour. Relator held this position for eight days. From March 2010 until December 2010, relator worked for Doherty Staffing Solutions as a clean-room fab operator for client company Cypress Semiconductor, earning \$12.08 per hour. This position was a temporary-to-hire position, but Cypress declined to hire relator after his nine-month contract expired.

On April 12, 2011, relator attended an open house held by respondent Data Recognition Corporation (DRC), where he was invited to apply for a position grading tests. The position required a college degree, but no specific experience. Relator completed an application and several aptitude tests, after which he was offered a position

as a test scorer. The position would pay \$11.50 per hour for 35 hours per week, with a \$50 bonus for working 40 hours per week. The position was scheduled to begin on April 14 and last 17 days, with the possibility of continuing until July. Relator declined the position, alleging it was too short in duration and was not a temporary-to-hire position.

On May 4, respondent Department of Employment and Economic Development issued a determination of ineligibility, holding that relator was ineligible for unemployment benefits from April 10 until June 4. Relator appealed the determination, and the ULJ issued a decision that relator was ineligible for benefits due to refusing an offer of suitable employment. The ULJ affirmed the decision after relator's request for reconsideration, and this certiorari appeal follows.

D E C I S I O N

Relator challenges the ULJ's decision that he is ineligible for unemployment benefits. When reviewing a ULJ's decision, 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).

This court views the ULJ's factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb the ULJ's factual findings when they are supported by substantial evidence in the record. *Id.* Whether employment

is suitable is a question of fact. *Zielinski v. Ryan Co.*, 379 N.W.2d 157, 159 (Minn. App. 1985). Whether an employee is eligible for unemployment benefits under the facts as found by the ULJ, however, is a question of law that we review de novo. *Skarhus*, 721 N.W.2d at 344.

An applicant is ineligible for unemployment benefits for eight weeks if the applicant fails to accept an offer for suitable employment without good cause. Minn. Stat. § 268.085, subd. 13c(a)(2) (2010). “‘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.” *Id.*, subd. 13c(b) (2010). Relator does not challenge that he received an offer for employment and makes no argument that he had good cause to reject the offer; rather, he challenges only the ULJ’s determination that the employment offer was for *suitable* employment.

“Suitable employment means employment in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a). Multiple factors are considered when determining whether employment is suitable for an applicant, including the degree of risk to health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant’s customary occupation, and the distance between the employment and the applicant’s residence. *Id.* “[P]rimary 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.” *Id.*, subd. 23a(b) (2010).

Here, the ULJ found—and the record reflects—that since August 2009, relator has worked three different positions, two of which were temporary-to-hire, ranging from eight days to nine months. For these positions, relator was paid between \$11 and \$12.08 per hour. The position with DRC was a full-time, temporary position at which relator would earn \$11.50 per hour for the first 35 hours of work per week, and receive a \$50 bonus if he worked 40 hours per week. Based on these findings, the ULJ found that the position was in relator’s labor market area and was reasonably related to relator’s qualifications. *See* Minn. Stat. § 268.035, subd. 23a (defining suitable employment).

Relator’s argument that the position with DRC was not suitable employment is based on his assertion that short-term employment may not be suitable employment under the statute because of its temporary nature and a desire of the relator for long-term employment. As support for this assertion, relator relies on our decision in *Mbong v. New Horizons Nursing*, 608 N.W.2d 890 (Minn. App. 2000). In *Mbong*, we held that an applicant does not fail to accept an offer of “suitable employment” under the statute by declining short-duration assignments with a temporary employment agency if the applicant’s work history demonstrates a pattern of long-term employment. 608 N.W.2d at 892.

The applicant in *Mbong* was laid off from a permanent job at the end of February 1999, and then accepted and completed two one-day assignments from a temporary-employment agency immediately thereafter. *Id.* After increased frustration with clients

cancelling assignments, the applicant stopped accepting the temporary assignments. *Id.* We reversed a determination that the employment was suitable, noting that the one-day assignments were inconsistent with the applicant's employment history and that the applicant's unemployment lasted a total of less than two months. *Id.* at 893–94.

Unlike the applicant in *Mbong*, relator had not held a permanent position since he lost his attorney license more than 18 months before being offered the position with DRC. And at the time he turned down the position in April 2011, relator had not worked at all since December 2010. And relator's prospects for securing employment in one of his two "customary occupations"—law and engineering—were bleak. As mentioned above, length of unemployment and prospects for customary-occupation employment are both factors to consider when determining suitability of employment. Minn. Stat. § 268.035, subd. 23a(a).

The ULJ's finding that the offer from DRC was for suitable employment is supported by substantial evidence in the record. And because relator turned down an offer of suitable employment without good cause, the ULJ correctly applied the law in holding that he was ineligible for unemployment benefits for an eight-week period beginning April 10, 2011. *See* Minn. Stat. § 268.085, subd. 13c(a)(2)

Affirmed.