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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2090**

Craig Burke,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed August 13, 2012  
Affirmed  
Rodenberg, Judge**

Department of Employment and Economic Development  
File No. 28376011-3

Craig Burke, Minneapolis, Minnesota (pro se relator)

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

Considered and decided by Rodenberg, Presiding Judge; Cleary, Judge; and  
Willis, Judge.\*

**UNPUBLISHED OPINION**

**RODENBERG**, Judge

Relator challenges an order of the unemployment-law judge (ULJ) affirming a  
determination that relator is ineligible for unemployment benefits because he was not

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

actively seeking suitable employment. Because relator failed to produce evidence of his job-search efforts and failed to provide good cause sufficient to warrant an additional evidentiary hearing, we affirm.

## **FACTS**

Relator Craig Burke worked as a temporary employee on a full-time basis for Pro Staff beginning in April 2010. In March 2011, relator's ability to work became subject to certain medical restrictions following surgery to address his carpal-tunnel syndrome. Relator's work with Pro Staff ended July 13, 2011.<sup>1</sup>

In August 2011, relator established a benefits account with the Minnesota Department of Employment and Economic Development (DEED). The DEED unemployment insurance request-for-information form, submitted by relator at the time of his initial request for benefits, contained a section requesting that he list his "efforts to find employment" during the period in which he was claiming eligibility. This section, which relator left blank, contained spaces for basic information including employer name, contact date, how the contact was made (e.g., in-person, resume, call, etc.), and the result (e.g., submitted application, interview date set, etc.).

In a determination-of-ineligibility letter dated August 22, 2011, DEED informed relator that he was not eligible for unemployment benefits "until the applicant is available for and is actively searching for existing employment." The letter noted that relator "is able to work with restrictions" and that relator "was sent a work search document and

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<sup>1</sup> The record is unclear regarding the circumstances of the termination of relator's employment with Pro Staff. That fact, however, is not at issue in this appeal.

returned it with no information about looking for work.” Additionally, the letter noted that “[i]f your [sic] able to work with restrictions, you need to submit 3–4 job applications per week showing us your [sic] looking for work within your restrictions.” The letter further provided that relator had “pending issue(s) that may affect [his] eligibility for benefits” and listed “No Information from Applicant.”

Relator appealed DEED’s determination of ineligibility to the ULJ and argued that “I have been searching for work, and I am able to show records of my search.” The notice of appeal sent by DEED informed relator that a telephone evidentiary hearing was scheduled for ten days later, on September 16, 2011, and emphasized, in bold print, that the hearing would focus on “[t]he Ability-Availability-Actively Seeking issue.” The notice also indicated that the ULJ’s decision would be based on evidence submitted by DEED and relator.

At the evidentiary hearing, relator testified that (1) he was able to perform call-center and sales work with his restrictions; (2) he had done call-center work in the past; (3) in early August 2011 he applied for a customer-service call-center position with the Hartford Insurance Company and a customer-service position at Target; and (4) in mid-August 2011 he applied for a sales-associate position at Walmart via the corporate website and he applied for a banker position at US Bank. Relator claimed that he had applied for additional positions, but did not provide either documents or any such applications, and did not provide the names of employers or other details regarding these applications.

On September 22, 2011, the ULJ issued his findings of fact and affirmed DEED's determination of ineligibility. The ULJ found that relator was not actively seeking suitable employment and noted that "[a]n individual in similar circumstances to [relator] who was genuinely interested in obtaining suitable employment under the existing conditions in the labor market area would have applied for more than four positions in eight weeks of unemployment." The ULJ emphasized that relator "claimed that he applied for more than four positions," yet only "made vague references to the many positions he applied for over the internet" and was unable to "provide details about the position [applied for], the location of the position, or the rate of pay of the position," even though "[d]ocumentation provided to [relator] by [DEED] informed him that he was required to keep a record of his work search effort."

On September 26, 2011, relator filed a request for reconsideration, contending that

[d]uring my appeal I was unable to provide my job search activities. I do not have internet access so the only way I could retrieve the names of where I have applied would be from my phone, which I was unable to use during the appeal conference. I submitted a form with a few names of places I applied, but I have a lot more applications out there, I just could not prove it during the call.

In an order issued November 1, 2011, the ULJ affirmed relator's ineligibility for unemployment benefits and found that relator provided no good cause for failing to provide job-search records at the first hearing. The ULJ found that relator's

explanation for his failure to provide evidence of his job search activities at the time of his hearing is insufficient. . . . [Relator] provided no explanation for his failure to access [job search] information prior to his hearing, therefore, he did

not establish good cause for failing to present this evidence at his hearing.

Therefore, the ULJ concluded, relator failed to “put forward [any] reasons that justify modifying the findings of fact or decision . . . or ordering an additional evidentiary hearing.” The ULJ reasoned that relator had been notified of his appeal hearing ten days in advance, that relator “had the opportunity during that time to use his phone to access his job search activities, or go to his local public library to access the internet to access his job search activities,” and that relator must be aware of ways to access the Internet since he testified that he submitted a number of applications online.

Relator is before this court on a writ of certiorari.

## **D E C I S I O N**

In reviewing a certiorari appeal from a ULJ’s decision, this court may affirm the decision of the ULJ, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in the record, or are otherwise arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010).

This court exercises its own “independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law.” *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010). Yet, a ULJ’s determination whether a person is actively seeking and available for suitable employment is a factual one. *See McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 711–12 (Minn. App. 2010) (applying substantial-evidence standard to this determination). “This

court views the ULJ's factual findings in the light most favorable to the decision. . . . [and] will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008).

Minnesota law requires that a person seeking unemployment benefits must meet all ongoing eligibility requirements, including being both "available for suitable employment" and "actively seeking suitable employment." Minn. Stat. §§ 268.069, subd. 1(3), .085, subds. 1(4)–(5), 15(a), 16(a) (2010). To be actively seeking suitable employment, an applicant must make "those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment." Minn. Stat. § 268.085, subd. 16(a). Equitable relief from these requirements is statutorily prohibited. Minn. Stat. § 268.069, subd. 3 (2010).

When deciding a request for reconsideration, a ULJ "must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted" at the initial evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (2010). But, the ULJ is required to order an additional evidentiary hearing if a party presents new evidence not submitted at the evidentiary hearing that would likely change the outcome of the decision and if there was good cause for not having previously submitted that evidence. *Id.*

The ULJ here made a finding of fact that relator had applied for only four jobs in an eight-week period and concluded that relator had thus failed to put forth a reasonable, diligent effort toward finding a job and was not actively seeking employment. The

record supports the ULJ's finding. Relator admits that, beyond the four applications he referenced in his testimony, he produced no records or testimony evidencing specific employers that he contacted.

Based on the meager evidence in the record tending to show that relator was putting "reasonable, diligent effort" into finding a job, we decline to disturb the ULJ's factual finding. Because relator was not actively seeking suitable employment, he was not eligible for unemployment benefits. *See* Minn. Stat. § 268.085, subd. 1(5); *c.f.* *Monson v. Minn. Dep't of Emp't Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (affirming that relator who regularly read the newspaper and journal advertisements, conducted a single search of a job data bank, and applied for two or three positions in two months was not actively seeking employment and was ineligible for unemployment benefits); *James v. Comm'r of Econ. Sec.*, 354 N.W.2d 840, 841–42, 844 (Minn. App. 1984) (affirming that relator who had made four job contacts in three weeks, all by telephone, was not actively seeking employment and was ineligible for unemployment benefits), *review denied* (Minn. Dec. 20, 1984).

Relator claims that he provided evidence of applications to the ULJ in addition to the four applications about which he testified at the evidentiary hearing. Yet, relator admits that he did not submit the evidence until after the ULJ's decision on reconsideration had been issued. Even if relator had submitted the records in a timely manner, the ULJ found that relator did not provide good cause for failing to produce the records at the initial evidentiary hearing. The record substantially supports this finding. Relator was on notice prior to the evidentiary hearing that he was expected to produce

evidence of his job-search efforts at that hearing. Documents sent to relator with the notice of appeal included copies of relator's incomplete request-for-information form and the determination-of-ineligibility letter, each indicating that DEED was seeking specific information from relator regarding his job-search efforts and what level of effort (three to four applications per week) DEED expected. Moreover, relator was notified of his evidentiary hearing ten days in advance. Relator, whose own testimony demonstrates that he lived in a developed urban area and is proficient with the Internet, had the ability to access his job-search records for presentation at the evidentiary hearing.

Thus, even if relator had produced the records at the time he requested reconsideration, his failure to demonstrate good cause for not producing them at the evidentiary hearing precluded the ULJ from considering them. *See* Minn. Stat. § 268.105, subd. 2(c); *see also Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (recognizing that this court will defer to a ULJ's decision not to hold an additional hearing).

The ULJ's factual findings are substantially sustained by the record. Relator is not entitled to unemployment benefits.

**Affirmed.**