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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A12-0839

A12-1544

Bradley D. Blanski,
Relator,

vs.

Full Moon Enterprises, Inc.,
Respondent (A12-1544),

Department of Employment and Economic Development,
Respondent.

Filed April 15, 2013

Affirmed

Connolly, Judge

Department of Employment and Economic Development
Notice1105

Bradley D. Blanski, Princeton, Minnesota (pro se relator)

Full Moon Enterprises, Inc., Anoka, Minnesota (respondent)

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

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges two orders of the unemployment-law judge (ULJ). One order concluded that relator was ineligible to receive unemployment benefits because he was not available for or actively seeking suitable employment; the other dismissed relator's appeal of a revenue recapture because he did not participate in the evidentiary hearing. Because the evidence substantially tends to sustain the findings on which these orders were based, we affirm both orders.

FACTS

In 2009, relator Bradley Blanski, a certified automotive technician, began to work for respondent Full Moon Enterprises Inc. Relator suffered from various physical problems, including neuropathy, disk degeneration in his back, blurred vision, and dizziness, and his lifting was restricted. He was terminated in February 2011, and opened a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED).

In August 2011, relator began a job search in a different field. He looked online and checked classified ads for web-development jobs, but did not call any employers or register with temporary-job agencies.

In January 2012, DEED determined that relator was ineligible for benefits. Relator appealed this determination and, following a telephone hearing, a ULJ issued a decision that relator had not been actively seeking employment from November 20, 2011,

through the date of the hearing; would be ineligible for benefits until conditions changed; and had been overpaid \$1,124.

Relator requested reconsideration of the ULJ's decision. Because that decision had not addressed whether relator's medical conditions made him unavailable for suitable employment and relator's opportunity to present facts and arguments regarding his availability for work and his job search had been limited at the hearing, another ULJ ordered a second evidentiary hearing.

Following that hearing, the ULJ issued a decision that relator was not available for or actively seeking employment from August 21, 2011, through the date of the second hearing; would be ineligible for benefits until conditions changed; and had been overpaid \$5,532. In response to relator's request for reconsideration, the ULJ affirmed the decision. Relator sought certiorari review in this court.

Relator had previously sought certiorari review of another ULJ's dismissal of relator's challenge to DEED's filing a claim against his state tax refund to recapture the \$1,124 overpayment. At the hearing on the revenue recapture, relator declined to cooperate with the ULJ, who found that relator had failed to participate in the hearing and dismissed the appeal on that basis.

Relator now challenges the determinations that he has not been available for or actively seeking suitable employment and that he failed to participate in the hearing on the revenue recapture issue.

DECISION

This court may reverse or modify the ULJ's findings or inferences if they are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2012); *see also Peterson v. Nw Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) ("[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them."), *review denied* (Minn. Oct. 1, 2008).

1. Relator's availability for suitable employment

"'Available for suitable employment' means . . . 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 (2012). "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) (2012).

The ULJ found that "[v]irtually all of [relator's] job experience is as an automotive technician. [Relator] is not medically able to perform even light duty automotive technician work." Relator's answers to the ULJ's questions during the second hearing support this finding.

Q. Could you work a light duty auto tech job with your medical problems[?]

A. I've tried that and I was terminated.

....

Q. . . . [A]ssuming an employer was able to accommodate you and you were given light duty work, would you be able to do light duty work with your medical conditions and your lifting restrictions as they are now[?]

A. I can't answer that because . . . they just upped my medications and I don't know if that's gonna interfere or is it gonna work, I don't know.

The ULJ also found that “[relator] was equivocal and elusive when asked if he could physically work jobs in data entry, retail, or call center settings.” Again, relator’s testimony supports this finding.

Q. Now on a bad day about how long . . . [could you] . . . sit in a chair before you need to stretch or move around[?]

A. Sometimes as little as ten minutes.

Q. And about how long would you need to take a break before you can sit again[?]

A. . . . [I]t would probably be about 15 minutes or so.

Q. . . . And about how often would you say you have a bad day or a day where you have pain[?] . . .

A. It's about every day now

Q. Do you have problems with standing for long periods of time[?]

A. I don't know, I never tried standing for long periods of time

Q. Do you have any problems with typing or using a keyboard or a mouse[?]

A. Sometimes yes.

. . . .

Q. Do you think you could work a desk job where you were sitting at a desk for an eight or nine hour shift[?]

A. That depends on the ergonomics of the keyboarding and what not. I do have neck problems and neck issues

Q. Do you have any experience doing a job where you're sitting at a desk for a full shift, for a 40 hour week[?]

A. No.

Q. Okay, and do you think you could work a retail job with your conditions as they are now[?]

A. . . . [N]arrow it down a little bit for me.

Q. Okay, do you think you could work as a cashier[?]

A. It depends what they're doing [If] I was a cashier at a pet store and a lady asked me to lift a 40 pound bag of dog food out I probably couldn't do that.

. . . .

Q. Could you do a data entry job[?]

A. Like I said it all depends on the ergonomics, the keyboarding and whether my neck will accept that type of position.

....

Q. Would you be able to work in a call center setting[?]

A. It depends what the setting does and if they're willing to accommodate.

Because relator's testimony is evidence that substantially tends to sustain the ULJ's finding that relator "is not medically available for suitable employment[,] " we will not disturb that finding. See Minn. Stat. § 268.105, subd. 7(d)(5).¹

2. Relator's search for suitable 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. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not "actively seeking suitable employment."

Minn. Stat. § 268.085, subd. 16 (2012).

The ULJ found that:

[Relator's] job search consists of replying to craigslist postings for web development work [Relator] does not have sufficient education or experience necessary to make web development work suitable for him [Relator] is not actively seeking suitable employment because he is limiting his job search to jobs that are not suitable for him.

¹ The ULJ also found that relator was not available for suitable employment from November 2011 to January 2012 because relator testified that, during the fall semester of 2011, he was taking classes and would not have accepted a job that conflicted with his class schedule. Because we agree with the ULJ that relator was not medically available for employment at this time, whether he was also unavailable because of his student status is moot, and we do not address it.

Relator's answers to the ULJ's questions support this finding.

Q. Do you have any further evidence of your job search or where you've applied or what employers you've contacted[?]

....

A. There's 25 screen shots, 25, 28 screenshots of various employers that I've applied for.

Q. What are those screenshots from[?]

A. Some are craigslist, some are job alerts.

....

Q. Okay, and have you looked for, have you applied for any jobs since March 20[?]

A. Yes.

Q. Where have you applied since March 20[?]

A. Where. I don't know.

Q. Are these craigslist postings[?]

A. Yes.

....

Q. Some of the jobs you listed, you stated you hadn't taken a specific class yet. Is it common to work as a web developer or designer without having a completed degree[?]

A. I can't answer that, . . . I have no idea.

Q. Have any of the employers gotten back to you and stated that you needed a completed degree[?]

A. No, there's no employers that ever called me back.

....

Q. Have you had any job interviews or offers[?]

A. No.

Q. Other than going on line and looking in the paper, have you gone to the workforce center for help with your job search[?]

A. Not recently, no.

....

Q. Have you called any employers over the phone looking for work[?]

....

A. . . . [N]o I didn't know I was supposed to cold call.

Q. Have you registered for work with any temporary services[?]

A. No.

Relator's testimony provides evidence that substantially sustains the ULJ's finding that relator was not actively seeking suitable employment. *See* Minn. Stat. § 268.105, subd. 7(d)(5).

3. Revenue recovery

Relator was notified that DEED would file a claim of \$1,124 against his state tax refund and that he could contest the action by requesting a hearing, which he did.² A ULJ dismissed relator's appeal of the revenue recapture on the ground that relator did not participate in the hearing. *See* Minn. Stat. § 268.105, subd. 1(d) (2012) (providing that a ULJ has discretion to dismiss an appeal when a party fails to participate personally in a hearing); *see also* Minn. Stat. § 270A.09, subd. 1a (2012) (providing that any debtor contesting setoff claims by DEED shall have a hearing conducted pursuant to Minn. Stat. § 268.105).

The ULJ found that, although relator was present at the hearing, he did not participate because he

refused to cooperate at the beginning of the hearing, when the [ULJ] attempted to identify the documents that had, to that point, been submitted for evidence and mailed to [relator]. He was advised that he could object to documents but that he needed to be in possession of the[m] . . . before the hearing could proceed. He refused to acknowledge that he had the documents but did not deny it either. Warned that his appeal would be dismissed if he did not cooperate, [relator] did not relent.

The evidence provided by the hearing transcript substantially sustains these findings.

² A ULJ determined in May 2012 that relator had been overpaid \$5,532, but the revenue recapture issue pertains only to the \$1,124 portion of the overpayment that was determined in February 2012.

The ULJ questioned relator:

Q. Will you please get the Notice of Hearing and let's take a look at that.

A. . . . I wrote a letter on February 28. It asks for removal of dated material February 17, 2012, and I asked to remove the document dated February 8, 2012 . . . I'm sorry, strike February 17. I asked those documents to be amended [sic] to the appeal and I have not received any confirmation of that. So, I don't know which documents . . . we're supposed to go over because I never received anything from [DEED].

Q. Okay. We sent you on February 24 a Notice of Hearing . . .

A. Okay.

. . . .

Q. Along with that Notice of Hearing, which you must have gotten because you knew to answer the phone, along with that there were about 20 pages stapled to that. Did you receive those?

A. Right. But it's not amended properly, so you need to do a continuance.

Q. So did you receive them, so you and I are going to go through those or else I'm going to dismiss your appeal.

A. Sir, I have the right to amend that properly [DEED] had made a mistake and amended documents that were incorrect to the proceedings I don't understand why I have to be forced to do this. Do you have copies . . .

Q. Because you filed, because you filed an appeal . . .

A. No, no, no.

Q. . . . of a claim that [DEED] filed against your taxes.

A. Do you have the dated . . .

Q. You filed an appeal of that tax claim and so we sent you the documents that were used in that proceeding

. . . .

A. Do you have the document dated February 28, 2012? Those are the documents we're supposed to go over. If it's not amended . . .

Q. The first document we're supposed to go over is the Notice of Revenue Recapture dated 2/6/2012. Do you have that?

A. No, sir, I do not, because it's not properly amended.

Q. Okay. So you have it but you're not willing to accept that [it's] a valid document[?]

A. That is not the true . . .

Q. Is that what you're telling me?

A. Right. [DEED], whether purposefully or not, amended letters that were not correct . . . to that appeal.

. . . .

Q. I need you to answer this question, next question, yes or no. Do you have a packet of documents containing about 20 pages that was attached to the Notice of Hearing?

A. Yes, I have that document.

Q. Okay, then I'm going to ask you one more yes or no question. Is the second page of that packet a Notice of Revenue Recapture that's dated 2/6/12?

A. Yeah, that's dated 2/6.

Q. Okay. So, you and I are going to go through these documents, or I'm going to dismiss your appeal. Which is it going to be, Sir?

A. I'm sorry, I need the right to amend the appeal properly

. . . .

Q. You filed an appeal. We're going to have a hearing. In order to have the hearing, you and I need to go through the documents.

A. Okay.

Q. If you're not willing to do that, I'll dismiss the appeal. It's entirely up to you, Sir.

A. Well, clearly [DEED] is not in the best interest of me, but are acting in their own concert. [sic] I did mail you the correct and true correct [sic] documents and you do not care to talk about them.

Q. Okay. I'm going to go through the documents in sequence and you're not willing to do that, so . . .

A. Well, I'm sorry. I asked for a continuation. I don't see how that's irrelevant

Q. . . . I'll say it one more time. You appear to have the documents. If there are other documents that you've sent, we will address those in order. Before I do anything, I need to make sure you have the initial documents that gave rise to this issue. If you're not willing to acknowledge that you have those and review those with me

A. Those are not true . . .

. . . .

Q. . . . then I'll dismiss the appeal.

The ULJ's finding that relator did not participate in the hearing is substantially supported by relator's testimony during the hearing.

There is no basis to reverse that finding or the findings that relator has not been medically available to work and has not been actively seeking employment.

Affirmed.