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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-706**

Steven Heimel,  
Relator,

vs.

Mike's Truck & Trailer Repair, Inc.,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed December 21, 2010  
Affirmed  
Stoneburner, Judge**

Department of Employment and Economic Development  
File Nos. 244471862, 236097942

Ryan L. Kaess, St. Paul, Minnesota (for relator)

Mike's Truck & Trailer Repair, Inc., St. Paul, Minnesota (respondent employer)

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

Considered and decided by Toussaint, Presiding Judge; Stoneburner, Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that relator made himself unavailable to accept suitable work as a truck mechanic by failing to

reinstate his driving privileges after his personal and commercial driver's licenses were invalidated due to a traffic incident. Because the record supports the decision, we affirm.

## **FACTS**

Relator Steven Heimel worked as a truck mechanic for Mike's Truck & Trailer Repair Inc. (Mike's) from April 2008 to July 2009, when he was laid off for lack of work. Relator was determined to be eligible for unemployment benefits.

Nine days after he was laid off, relator was involved in a traffic incident that resulted in revocation of his driver's license for 90 days and disqualification of his commercial driver's license for one year. Mike's contacted relator to discuss his possible return to work. But, when Mike's learned that relator did not have valid licenses, Mike's told relator that it could not offer him employment because all of its mechanics are required to hold valid standard and commercial driver's licenses. Mike's then contacted respondent Minnesota Department of Employment and Economic Development (DEED) to report that relator was unable to return to work at Mike's.

DEED concluded that relator continued to be entitled to unemployment benefits because he had not refused a job offer. Mike's appealed. During the telephone hearing, the ULJ concluded that Mike's had not made a "bona fide" job offer that was refused, but the ULJ identified another eligibility issue: whether relator was "available for suitable employment" under Minn. Stat. § 268.085, subd. 15(a) (Supp. 2009). Both parties agreed that the new issue could be considered without additional preparation time. The ULJ then inquired about relator's past work and training.

Relator testified that he was trained to be a truck mechanic, did that work in each of his last three jobs, and has never worked as anything other than a truck mechanic. Relator testified that many mechanics' positions require a driver's license, but some jobs are available that do not have such a requirement. Although relator was eligible to have his driver's license reinstated at the time of the hearing, he had not paid the necessary fees to obtain license reinstatement. The ULJ did not ask for, and relator did not offer evidence regarding whether relator is applying for, or is qualified to perform, work other than as a truck mechanic. Based on the evidence presented, the ULJ concluded that relator is not trained to do anything other than mechanic's work and that relator has restricted his availability for such employment by losing and failing to restore his driving privileges. Relator challenges this determination by writ of certiorari.

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

Construing the statutes governing eligibility for unemployment benefits is a question of law that we review de novo. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). We review a ULJ's findings in the light most favorable to the decision to determine whether there is evidence that substantially supports those findings. Minn. Stat. § 268.105, subd. 7(d)(5) (2008); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

A benefits applicant must be "available for suitable employment." Minn. Stat. § 268.085, subd. 1(4) (Supp. 2009) This requires that the applicant is "ready and willing" to accept such employment. *Id.*, subd. 15(a). "Suitable employment" is defined as "employment in the applicant's labor market area that is reasonably related to the

applicant's qualifications." Minn. Stat. § 268.035, subd. 23a(a) (Supp. 2009). Among the factors to consider when determining the applicant's suitable employment type are the applicant's "prior training, experience, length of unemployment, [and] prospects for securing employment in the applicant's customary occupation." Minn. Stat. § 268.035, subd. 23a(a).

The ULJ's findings that relator "has only ever worked as a truck mechanic" and "is not trained to do anything else" support the ULJ's implicit finding that relator's suitable employment is as a truck mechanic. The findings are based on relator's testimony about his training and work experience. The record, therefore, substantially supports the ULJ's finding.

"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). Relator testified that he believes that a driver's license is not mandatory for all mechanics' jobs, but also testified that many employers require mechanics to hold valid driver's licenses. Mike's owner testified that Mike's requires mechanics to have a "standard" driver's license and to obtain a commercial driver's license within 60 days of hiring because, as part of their job, they test-drive repaired vehicles. The ULJ's findings that relator's "not having a driver's license is a restriction on his employment," and "this restriction prevented him from accepting suitable employment from the date he lost his license" support the ULJ's implicit finding that relator made himself unavailable for suitable employment by losing and failing to reinstate his driving privileges.

On appeal, relator argues that the ULJ's opinion is "cryptic" and does not clearly explain the link between relator's suitable field of employment and the obstacle of lacking driving privileges. We disagree and conclude that the ULJ's findings are adequate and are supported by the record.

Relator argues that the ULJ's order creates the rule that a person without a driver's license is per se ineligible for benefits because he is unavailable for any type of work. Relator asserts that such a rule is contrary to public policy and the liberal intent of the statute. But relator is misreading the ULJ's decision. The ULJ found that lack of licenses made relator unavailable for many jobs in relator's area of suitable employment. Minn. Stat. § 268.085, subd. 15(a), provides that any restrictions that prevent accepting suitable employment, "either self-imposed or created by circumstances, temporary or permanent" preclude an applicant from being considered "available for suitable employment." Nothing in the decision purports to make all persons without driver's licenses unavailable for suitable employment.

Relator argues that the ULJ did not properly consider his request for reconsideration. Relator's request was supported only by a letter summarizing, and to some extent mischaracterizing, the evidence presented during the hearing. Relator asserts that it was improper for the ULJ to rely solely on the opinion of a single employer in determining the requirements of mechanic's employment generally. But relator fails to consider his own testimony that many employers require mechanics to have driver's licenses. On reconsideration, the ULJ reaffirmed the initial decision, noting that relator's request for reconsideration presented the same argument that he made during the hearing

and advanced nothing that would change the legal or factual findings established at the hearing. Relator has failed to demonstrate that the ULJ did not properly consider his reconsideration argument.

On appeal, relator appears to argue that he could have obtained employment with “other employers in the labor market.” But even if relator’s testimony that such jobs existed is evidence that he could have obtained such a job, such evidence does not negate the evidence that circumstances have made him unavailable for many jobs in his area of suitable employment, precluding a finding that he is “available for suitable employment” and making him ineligible for unemployment benefits until his driving privileges are reinstated.

**Affirmed.**