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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0848**

Yolanda Wilson,  
Relator

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed December 3, 2012  
Affirmed  
Chutich, Judge**

Department of Employment and Economic Development  
File No. 29336130-4

Yolanda Wilson, Brooklyn Park, Minnesota (pro se relator)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Chutich,  
Judge.

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

Relator Yolanda Wilson challenges the unemployment-law judge's determination  
that she was ineligible for unemployment benefits because she was not actively seeking

suitable employment and was not available for suitable employment. Because substantial evidence supports the judge's findings, we affirm.

## **FACTS**

Wilson worked in customer service at Comcast Cable from June 1996 until she was laid off in February 2011, at which time she began receiving unemployment benefits. Wilson began pursuing a degree in criminal justice, and enrolled in classes at Metropolitan State University. Wilson's class schedule was as follows: Monday, 1:00 p.m. to 4:20 p.m.; Tuesday, 6:00 p.m. to 9:20 p.m.; and Friday, 6:00 p.m. to 9:20 p.m. She also volunteered at a correctional facility between 9:00 a.m. and 1:00 p.m. on Wednesdays.

In February 2012, respondent Minnesota Department of Employment and Economic Development determined that Wilson was no longer eligible for benefits because she could not document that she was conducting an active search for work or that she was willing to quit school for a job opportunity. Wilson appealed this determination, and the unemployment-law judge held a hearing on March 15, 2012.

Wilson testified that she had applied for several jobs since her schooling began. The judge found that she applied at a few places that were not hiring, and applied for at least one job for which she was clearly unqualified. Wilson testified that she does tell employers that she is in school with the hope that they will work around her school schedule. Wilson listed her school schedule on job applications as hours she was not available to work, "but then writes that she is available for any job that the employer is offering." She testified that she would be willing to drop her classes if she were offered

conflicting employment, but she continued to emphasize that she wanted a position that would work around her school schedule.

The judge concluded that “Wilson is not actively seeking suitable employment given her background because she is reporting that her schooling limits her availability . . . in her applications.” Thus, he affirmed the department’s determination of ineligibility.

Wilson requested reconsideration, and the unemployment-law judge considered recent evidence. Since the March telephone hearing, Wilson worked in a student position at Metropolitan State, which she contended showed that she was available for suitable employment. Because that position accommodates her school schedule, however, the judge found that the “position does not support a finding that Wilson is willing to quit school, rearrange classes, or get excused from classes to accept suitable employment.” Thus, the judge affirmed his original decision denying benefits.

Wilson now appeals the unemployment-law judge’s decision. She contends that the judge erred in concluding that she was not actively seeking or available for suitable employment. Specifically, she points to her testimony that she would quit school or rearrange classes if suitable employment were available, and that she was actively seeking employment.

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

To remain eligible to receive unemployment benefits, an applicant must be “available for” and “actively seeking” suitable employment. Minn. Stat. § 268.085, subd. 1(4), (5) (2010). Whether an applicant is actively seeking and available for suitable

employment is a factual determination. *See Goodman v. Minn. Dep't of Emp. Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977); *McNeilly v. Dep't of Emp. & Econ. Dev.*, 778 N.W.2d 707, 711 (Minn. App. 2010). Findings of fact are reviewed in the light most favorable to the unemployment-law judge's decision, the judge's credibility determinations are given deference, and "we will not disturb the [judge]'s factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "On appeal, we may affirm the [judge]'s decision or reverse or modify the decision if the petitioner's substantial rights have been prejudiced because the decision is not supported by substantial evidence, is arbitrary or capricious, or is affected by an error of law." *Hasledalen v. Dep't of Emp. & Econ. Dev.*, 811 N.W.2d 133, 135 (Minn. App. 2012); *see also* Minn. Stat. § 268.105, subd. 7(d) (2010).

*Actively seeking suitable employment*

Under the statute, a person who is "[a]ctively seeking suitable employment" is a person who is making "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). An applicant may not limit his or her search to positions that are unavailable or for which the applicant is not qualified. *Id.*

Wilson testified that she had applied for more than 30 or 40 jobs since becoming unemployed. Indeed, the unemployment-law judge found that she had applied for several jobs. Her work search record suggests that she applied for or inquired about 59 jobs

between the date she was determined to be ineligible and the date of the hearing. Given this work search record, we conclude that Wilson did actively seek employment. *Cf. Monson v. Minn. Dep't of Emp. Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (finding that applying for two or three positions in two months was not actively seeking employment); *James v. Comm'r of Econ. Sec.*, 354 N.W.2d 840, 841–42, 844 (Minn. App. 1984) (finding that a person was not actively seeking employment where he only made four job contacts in three weeks), *review denied* (Minn. Dec. 20, 1984).

While we conclude that the unemployment-law judge's determination on this point is not supported by substantial evidence, the denial of benefits was also based on his finding that Wilson was not available for suitable employment. We turn next to that requirement.

*Available for suitable employment*

“Available for suitable employment’ means an applicant is ready and willing to accept suitable employment.” Minn. Stat. § 268.085, subd. 15(a) (2010). “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.” *Id.* Regarding students, the statute provides that:

[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.

*Id.*, subd. 15(b). Here, the judge found that although Wilson was willing to work around her school schedule, she was not “willing to quit school, rearrange her classes, or get excused from classes to accept suitable employment.”

The unemployment-law judge’s finding that Wilson restricted her availability on job applications to the hours she was not in school is supported by substantial evidence.<sup>1</sup> While Wilson testified she would be willing to quit school to take suitable employment, she freely admitted that she listed her school schedule on job applications as hours that she was unavailable to work. Thus, the judge did not find credible her testimony that she was willing to quit school or rearrange her classes. We must defer to the judge’s credibility determinations. *See Skarhus*, 721 N.W.2d at 345 (“Credibility determinations are the exclusive province of the [unemployment-law judge] and will not be disturbed on appeal.”).

We recognize and appreciate Wilson’s initiative in furthering her education and future employment prospects. Given our deference to the unemployment-law judge’s credibility determinations, however, we must conclude that the judge properly determined that Wilson was ineligible for benefits.

**Affirmed.**

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<sup>1</sup> Our conclusion is further bolstered by Wilson’s August 2012 submission to this court, in which she stated “I was available during the earlier hours of Monday, Tuesday, Thursday, Friday, all day Saturday and later in the evening on Wednesday[]s to actively seek suitable employment, as well as work suitable employment in the event a position was offered,” thus implying that she was only willing to work around her school schedule.