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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1121**

BreeAnna Odell,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed March 4, 2013
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 29450989-3

BreeAnna Odell, Duluth, Minnesota (pro se relator)

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

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she was not available for or actively seeking suitable employment. We affirm.

FACTS

Relator BreeAnna Odell worked as a part-time certified nursing assistant for Benedictine Care Centers. She worked 22 to 25 hours per week, with work hours from 10:00 p.m. to 6:00 a.m. every Thursday and every other Friday and Saturday and every other Tuesday and Wednesday. Her employment ended March 6, 2012.

Odell established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). In her request for benefits, Odell indicated that she was a full-time student in a nursing program but would rearrange her class schedule for work. She also indicated that she did not think she could “work[] nights anymore especially with my other children.” DEED determined that Odell was ineligible for benefits “until [she] is willing to quit school, is available for work during the days and hours that are normal for [her] occupation, and can document an active work search.” Odell appealed.

A ULJ conducted an evidentiary hearing on April 6. Odell testified that in the previous month, she had applied for employment at two nursing facilities and at a portrait studio, although she had no experience with photography, and had obtained an employment application from a third nursing facility but had not yet submitted it. She

had not taken any additional steps toward obtaining a job, such as posting a resume online or registering with a staffing agency. Odell explained that her job search, ability to work, and ability to attend classes (which she had reduced to a part-time schedule) were limited because she was pregnant, with a due date of August 28, and had been experiencing extreme nausea and other physical impairments. She testified that she received medication from her doctor on March 27 that had largely countered the nausea.

The ULJ found that Odell was not available for or actively seeking suitable employment for the period March 6 through April 6 and therefore “is not eligible for unemployment benefits for that period or thereafter and until she provides verifiable medical evidence that she is physically able to work and other documentary evidence that she is available for and actively seeking suitable employment within the meaning and intent of unemployment law.” The ULJ’s decision advised Odell of her right to seek reconsideration but also included a memorandum instructing Odell to submit to DEED’s customer-service center evidence of her compliance with eligibility requirements for periods after April 6.

Odell sought reconsideration, arguing that she is “trying hard to get a job.” The ULJ affirmed the ineligibility determination and reiterated that Odell should provide any evidence that she meets the eligibility requirements for periods after April 6 to DEED’s customer-service center. This certiorari appeal follows.

DECISION

In reviewing a certiorari appeal from a ULJ’s decision, we 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) (2012). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb those findings "when the evidence substantially sustains them." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). The ultimate determination of whether an employee is eligible for unemployment benefits is a question of law, which we review de novo. *Carlson v. Dep't of Emp't and Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

To be eligible for unemployment benefits, an applicant must be "available for suitable employment" and "actively seeking suitable employment." Minn. Stat. § 268.085, subd. 1 (2012). Whether an applicant is available for and actively seeking suitable employment is a factual determination. *Goodman v. Minn. Dep't of Emp't Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977); *see McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 711-12 (Minn. App. 2010) (reviewing for substantial evidence).

Available for suitable employment

To be "available for suitable employment," an applicant must be "ready, willing, and able to accept suitable employment" and may not place any restrictions, "self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment." Minn. Stat. § 268.085, subd. 15(a) (2012). An applicant who has restrictions on the hours of the day that he or she can work that are not "normal for the

applicant's usual occupation or other suitable employment" does not meet the requirement of being available for suitable employment. *Id.*, subd. 15(d) (2012).

The ULJ found that Odell was not available for suitable employment between March 6 and April 6 because complications related to her pregnancy impeded her ability to attend her classes or look for work, let alone perform work, and prevented her from working during her customary overnight work shifts. Odell agrees that "[i]n the beginning of [her] filing for unemployment" she was "constantly sick at night" and unable to work night shifts but argues that she should be eligible for benefits because she is no longer sick and is "available for work during anytime of the day and any days of the week." Evidence of Odell's current availability is neither properly before us, *see Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990), nor relevant to the ULJ's finding as to her availability between March 6 and April 6. Substantial evidence supports the finding that Odell was unavailable for suitable employment during that time frame.

Actively seeking 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." *Id.*, subd. 16(a) (2012).

The ULJ found that Odell was not actively seeking employment between March 6 and April 6. The information that Odell provided in her application for employment benefits and her testimony at the hearing support that finding. During her first week

without employment, March 6-10, Odell submitted one employment application for a full-time position at a nursing home. The following week, March 11-17, Odell submitted one employment application for a job outside her field. Because the application was for a position as a photographer and required photography experience that Odell admittedly lacks, it does not contribute toward the requirement to actively seek suitable employment. *See id.* (providing that pursuing positions “above the applicant’s training, experience, and qualifications” is not actively seeking suitable employment). The following week, March 18-24, Odell again submitted one employment application for a position as a certified nursing assistant at an assisted-living facility. She did not submit any employment applications the week of March 25-31. And the week of the hearing before the ULJ, April 1-7, Odell again did not submit any employment applications. She had an application for employment with another nursing home but had not completed and returned it as of April 6.

Because Odell’s efforts to obtain suitable employment between March 6 and April 6 consisted solely of submitting two applications for suitable employment, substantial evidence supports the ULJ’s determination that she was not actively seeking suitable employment. *See Monson v. Minn. Dep’t of Emp’t Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (concluding that relator who researched a data bank for employment opportunities, regularly consulted professional journals and newspaper employment notices, and applied for two or three positions, but did not pursue positions offering a salary he deemed insufficient, was not actively seeking work); *James v. Comm’r of Econ. Sec.*, 354 N.W.2d 840, 841-42 (Minn. App. 1984) (concluding that relator who, during a

three-week period, made phone contact with four employers and visited the job-service office twice was not actively seeking suitable employment), *review denied* (Minn. Dec. 20, 1984).

Odell's indisposition during that time frame does not alter this conclusion. While it explains why Odell did not make further efforts to obtain employment and was largely, if not wholly, unavailable for employment, it does not alter the fact that she did not satisfy the eligibility requirements to which all unemployment-benefits applicants are held. *See* Minn. Stat. § 268.069, subd. 1 (2012) (providing as prerequisite to payment of unemployment benefits that "the applicant has met all of the ongoing eligibility requirements under section 268.085"). Unemployment benefits are not support payments but a "temporary partial wage replacement" for those individuals who are ready and willing to work but unable to obtain employment. Minn. Stat. § 268.03, subd. 1 (2012). There is no equitable allowance of unemployment benefits for those who want to but are unable to work. *See* Minn. Stat. § 268.069, subd. 3 (2012).

Because there is substantial evidence that supports the determination that Odell was not available for or actively seeking suitable employment between March 6 and April 6, the ULJ properly determined that she was ineligible for benefits for that time period.

Affirmed.