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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1145**

Curtis Lee McCoy,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 12, 2009
Affirmed
Collins, Judge***

Minnesota Department of Employment and Economic Development
File No. 20719643-3

Curtis L. McCoy, 8209 College Trail, Apartment 25, Inver Grove Heights, MN 55076
(pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Stoneburner, 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UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator is ineligible to receive unemployment benefits because he was a student and was unwilling to quit school to accept suitable employment. We affirm.

FACTS

Relator Curtis McCoy applied for unemployment benefits in March 2008. He was then enrolled as a full-time student at Brown College in Mendota Heights and was attending classes on Tuesday and Thursday mornings. According to the information form that McCoy submitted, his class attendance affected his ability to seek or accept employment, he was not seeking work, and he was unwilling to quit school to accept employment if necessary. McCoy's explanation was, "I am looking for employment in June of 2008 in criminal justice when I graduate." Based on this information, respondent Minnesota Department of Employment and Economic Development (the department) determined that McCoy was a student who was unwilling to quit school to accept suitable employment and, therefore, is ineligible for unemployment benefits.

McCoy appealed the decision, and a hearing was held. McCoy asserted that someone at the department had changed his answers on the information form, including those addressing whether his schooling affected his ability to accept work and whether he was seeking work. McCoy admitted that he had stated that he was unwilling to quit school, but said that he did not understand the question and that, in fact, he was willing to quit school because Brown College is unaccredited. McCoy also maintained that he

would be willing to quit school despite the fact that he had only approximately three and one-half months left of his three-year course of study because he could finish his degree by taking courses online or attending evening classes. McCoy conceded that the completed form accurately reflected most of his responses, and he offered contradictory testimony regarding his response to the questions about the effect of school on his ability to seek or accept employment and about whether he was qualified to be a police officer.

The ULJ found that McCoy is ineligible for unemployment benefits because he was a student and was unwilling to quit school to accept a job that interfered or conflicted with his classes. Following McCoy's request for reconsideration, the ULJ affirmed the earlier decision, finding that a different result was not warranted based on McCoy's arguments or the record. Regarding additional evidence McCoy wanted to submit, the ULJ determined that McCoy had not established good cause for failing to submit the evidence at the original hearing and that there was no reason to order an additional evidentiary hearing. This certiorari appeal followed.

D E C I S I O N

On certiorari review, this court will not disturb the ULJ's decision unless it was based on unlawful procedure, legal error, or insubstantial evidence with respect to the entire record, or unless it was arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (Supp. 2007). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn.

App. 2006) (citations omitted). An appellate court will review “factual findings in the light most favorable to the decision[.]” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). We review a decision by a ULJ to deny an additional evidentiary hearing using an abuse of discretion standard. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

An unemployment benefits applicant may be eligible if “the applicant was able to work and was available for suitable employment, and was actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4) (Supp. 2007). “To be considered ‘available for suitable employment,’ a student must be willing to quit school to accept suitable employment.” *Id.*, subd. 15(b) (Supp. 2007).

There is substantial evidence in the record to support the ULJ’s finding that McCoy is ineligible to receive unemployment benefits because he was unwilling to quit school to accept suitable employment. The form completed by McCoy was clear, and there is no evidence to support McCoy’s contention that his answers were changed.

To be considered for suitable employment, the applicant’s “attachment to the work force must be genuine.” *Id.*, subd. 15(a) (Supp. 2007); *see also Goodman v. Minn. Dep’t of Employment Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977) (holding that determination required regarding student eligibility for unemployment benefits is whether student’s attachment to work force is genuine). Here, McCoy stated that he would be willing to quit school to accept employment, but he had completed all but three and one-half months of his three-year course of study and had invested approximately \$86,000 in his education. This supports the finding that McCoy’s real intention was likely to remain

in school and graduate in June 2008 before beginning to work in his chosen field, which is exactly what he initially indicated on the application form. Thus, there is substantial evidence to support the ULJ's determination that McCoy is ineligible for unemployment benefits because he was unwilling to quit school and therefore was unavailable for suitable employment.

Finally, in his request for reconsideration, McCoy sought to offer his statement as evidence that employers are "discarding schools that are not accredited." The ULJ must order an additional evidentiary hearing when a party demonstrates that the evidence not submitted at the initial hearing "(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the hearing was likely false and . . . had an effect on the outcome of the decision." Minn. Stat. § 268.105, subd. 2(c) (2008). Following our careful review of the record, we conclude that McCoy's belatedly proffered evidence would do neither and the ULJ did not abuse his discretion by denying McCoy's request for an additional hearing.

Affirmed.