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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1017**

Kevin D. Olson,
Relator,

vs.

Department of Employment and
Economic Development,
Respondent.

**Filed February 27, 2012
Affirmed
Cleary, Judge**

Department of Employment and
Economic Development
File Nos. 26207399-5, 26325915-3

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Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Cleary,
Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Relator challenges two ineligibility determinations for unemployment benefits, arguing that the unemployment-law judge (ULJ) erred by finding that he was unavailable for suitable employment for several months following each of two surgeries. We affirm.

FACTS

In late September 2009, relator Kevin Olson was discharged from his employment as a salesperson. He established a benefit account with the Department of Employment and Economic Development (DEED) and began receiving unemployment benefits. Later that fall, Olson began part-time employment as a teen center supervisor for the City of Shakopee. He continued to receive unemployment benefits.

On February 24, 2010, Olson had surgery on his left shoulder. In preparation for his surgery, Olson asked his supervisor to temporarily remove him from the teen center's work schedule. On March 23, Olson e-mailed his supervisor stating that his shoulder was healing slowly and that it appeared the last two weeks of April would be his "relaunching point." On April 26, Olson again e-mailed his supervisor, stating that he was "completely messed up." Olson wrote that his surgery arm was becoming more numb; that he was experiencing sharp, lengthy headaches; and that his doctor was quite concerned. The following day, Olson again e-mailed his supervisor, stating that he would "bow out" of his employment at the teen center at that time.

That August, Olson was diagnosed with a disease affecting the bones of his wrist. As a result, Olson had three wrist bones surgically removed on August 30. At a follow-

up visit on September 9, Olson's doctor noted that he was doing well overall, but that his right wrist was swollen and stiff and his right grip strength was weaker than his left grip strength. His doctor recommended that he begin range-of-motion exercises but advised him against any firm gripping for four weeks.

In late September 2010, Olson's benefit account expired. When he applied for a new benefit account, DEED questioned his availability for suitable employment.¹ On a follow-up form from DEED, Olson indicated that he was currently unable to work due to "illness or disability." DEED also sought information from Olson's doctors. In a medical statement dated October 8, 2010, Olson's shoulder doctor advised DEED that, as a result of the surgery on his left shoulder, Olson was totally unable to perform any type of work from February 24, 2010, through May 30, 2010. In a medical statement dated October 12, 2010, Olson's wrist doctor advised DEED that, as a result of his medical condition, Olson had been and would continue to be totally unable to perform any type of work from August 30, 2010, through December 31, 2010.

DEED determined that Olson had been unable to work from February 24, 2010, through May 30, 2010, and again from August 30, 2010, through October 20, 2010, the date of the determination. Consequently, Olson was ineligible for unemployment benefits during those time periods, with the ineligibility continuing until Olson was able to perform and ready and willing to accept suitable employment.

¹ DEED specifically questioned Olson's ability to work. Although the unemployment-benefits statute formerly required that an applicant be "able to work," this requirement was removed in 2009; the statute retains the broader "available for suitable employment" requirement. *Compare* Minn. Stat. § 268.085, subd. 1(4) (2008) *with* Minn. Stat. § 268.085, subd. 1(4) (2010).

Olson appealed these determinations. In support of his appeals, Olson submitted revised medical statements from his doctors. In his revised statement, Olson's shoulder doctor changed Olson's first ability-to-work date from May 31, 2010, to March 11, 2010. In her revised statement, Olson's wrist doctor changed Olson's second ability-to-work date from January 1, 2011 to September 10, 2010. In these revised medical statements, neither of Olson's doctors placed any restrictions on Olson's ability to work after the dates specified.

Following a telephonic hearing, a ULJ issued two decisions in which she found that the revised medical statements lacked credibility. Specifically, she found the revised medical statements from each doctor contradicted notes from earlier office visits and were based on "misleading information from Olson as to the range of duties a salesperson reasonably may be called upon to perform." She concluded that the evidence offered in support of the appeal was "self-serving, inconsistent, and misleading." The ULJ concluded that Olson was not available for suitable employment from February 24, 2010, through May 30, 2010, nor from August 30, 2010, through December 31, 2010, and thus not eligible to receive unemployment benefits during these time periods. Olson requested reconsideration of both decisions. The ULJ affirmed her initial findings of fact and decisions. This certiorari appeal followed.

DECISION

Olson argues that the ULJ's decisions are unsupported by the substantial weight of the evidence, warranting reversal. When reviewing the decision of a ULJ, we may reverse or modify the decision if the substantial rights of the relator have been prejudiced

by certain errors, including when the decision is unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2010).

Whether a party is entitled to receive unemployment benefits presents a question of law, which we review de novo. *See Bukkuri v. Dep't of Emp't & Econ. Dev.*, 729 N.W.2d 20, 21–22 (Minn. App. 2007) (reviewing unemployment-benefits statute de novo). However, whether a party is “available for” suitable employment, as required for eligibility, is a factual determination. *Goodman v. Minn. Dep't of Emp't Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977). We will sustain a ULJ’s factual finding if it is supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d); *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted). Additionally, credibility determinations are the exclusive province of the ULJ, and we accord such determinations deference on appeal. *Skarhus*, 721 N.W.2d at 344–45.

To be eligible for unemployment benefits in any week, an applicant must be “available for suitable employment.” Minn. Stat. § 268.085, subd. 1(4). “Available for suitable employment” means:

[A]n applicant is ready and willing to accept suitable employment. The attachment to the work force must be genuine. 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., subd. 15(a) (2010).

Olson argues that the ULJ was presented with “undisputed medical testimony” regarding his ability to work. Olson’s doctors, however, each submitted conflicting medical statements. When DEED first inquired, each doctor respectively stated that, following his shoulder and wrist surgeries, Olson was unable to perform any type of work for more than three months in the spring due to impairment of the shoulder, and for four months in the fall and winter due to impairment of the wrist. In their revised medical statements the following month, procured *after* Olson was found ineligible for unemployment benefits, both doctors reversed course and shortened Olson’s recovery period to approximately two weeks, suggesting that Olson was able to work without restrictions beyond those brief recovery periods. The ULJ found the revised medical statements lacked credibility, as they were not supported by the doctors’ previous medical notes from office visits and were based on misleading information provided by Olson. Giving due deference, we find no error in the ULJ’s credibility determination as to these radically differing medical statements.

In addition to the doctors’ conflicting medical statements, the ULJ was presented with other evidence regarding Olson’s availability for suitable employment. Although Olson argues that he was available for suitable employment beginning March 11, 2010, the record contains e-mail messages written by Olson that suggest his shoulder had not healed. For example, in a message dated April 26, 2010, Olson described his physical state as “completely messed up.” Additionally, Olson quit his part-time job at the teen center on April 27, 2010, in large part due to concern for his shoulder. In regard to his

wrist surgery, although Olson argues that he was available for suitable employment beginning September 10, 2010, in October 2010 he indicated to DEED that he was currently unable to work due to “illness or disability.”

Substantial evidence supports the ULJ’s finding that Olson was not available for suitable employment for the time periods indicated in the doctors’ original medical statements. Therefore, the ULJ did not err in concluding that Olson was ineligible to receive unemployment benefits for the two time periods at issue in this case.

Affirmed.