

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0031**

Carrie Dungan,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed October 21, 2013  
Affirmed  
Schellhas, Judge**

Department of Employment and Economic Development  
File No. 29772036-6

Carrie L. Dungan, Otsego, Minnesota (pro se relator)

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

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross,  
Judge.

**UNPUBLISHED OPINION**

**SCHELLHAS**, Judge

Relator challenges the unemployment-law judge's determination that she is ineligible for unemployment benefits because she was unavailable for suitable employment and was not actively seeking suitable employment. We affirm.

## FACTS

In May 2012, Northwest Family Physicians terminated relator Carrie Dungan's employment as a medical-records clerk and receptionist. On May 13, 2012, Dungan established a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). At the time of her employment termination, Dungan attended a surgical-technologist program at Anthem College on a full-time basis. In her unemployment-benefits application, Dungan stated that she was enrolled in school. DEED therefore sent Dungan a questionnaire, seeking more specific information about her school enrollment. Because Dungan did not submit answers to the questionnaire, DEED issued a determination of ineligibility on June 7, 2012. After Dungan responded to the questionnaire, stating that "study time and school time" affected her ability to look for or accept a job; that she was available to work 7:00 a.m. to 3:00 p.m. on weekdays and weekends; and that she was *unwilling* to quit, rearrange, or get excused from classes to accept suitable employment, DEED again denied Dungan's application for unemployment benefits on June 27, 2012.

On July 20, 2012, Dungan appealed the determination of ineligibility, and, on July 30, an unemployment-law judge (ULJ) dismissed her appeal because it was untimely. Dungan requested reconsideration of the dismissal. A ULJ ordered an evidentiary hearing to determine whether Dungan filed a timely appeal from the June 27 ineligibility determination and, if so, to "consider whether Dungan has been available for and actively seeking suitable employment since May 13, 2012, the beginning date of ineligibility indicated on the determination of ineligibility." If the ULJ concluded that

Dungan failed to file a timely appeal, “the [ULJ would] only consider whether Dungan has been available for and actively seeking suitable employment since July 27 [sic], 2012.”<sup>1</sup>

The ULJ conducted an evidentiary hearing and determined that (1) Dungan failed to file a timely appeal and that the ULJ therefore only had authority to decide Dungan’s eligibility for unemployment benefits after July 20, 2012, and (2) Dungan was not available for suitable employment and was not actively seeking suitable employment and therefore was ineligible to receive unemployment benefits. Dungan requested reconsideration, and a different ULJ affirmed.

This certiorari appeal follows.

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

We may reverse or modify a ULJ’s decision if the relator’s rights were prejudiced because the ULJ’s findings, inferences, conclusion, or decision are, among other grounds, affected by an error of law, in excess of the ULJ’s statutory authority, or made upon an unlawful procedure. Minn. Stat. § 268.105, subd. 7(d) (2012).<sup>2</sup> We give deference to the ULJ’s credibility determinations, view the ULJ’s findings in the light most favorable to the decision, and will not disturb the findings if the evidence substantially sustains them. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review legal questions de novo. *Id.*

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<sup>1</sup> The correct date is July 20, 2012.

<sup>2</sup> We cite the most recent version of the statutes in this opinion because they have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

The only issue on appeal is whether substantial evidence supports the ULJ's decision that Dungan was not available for and actively seeking suitable employment after July 20, 2012. Dungan argues that substantial evidence does not support the ULJ's finding that she was not available for suitable employment and was not actively seeking suitable employment after July 20, 2012.

“Available for suitable employment” means an applicant is ready, willing, and able 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.

Minn. Stat. § 268.085, subd. 15(a) (2012).

If the applicant is a student who has regularly scheduled classes, she generally “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) (2012).

“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. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not actively seeking suitable employment.

*Id.*, subd. 16(a) (2012). Whether an applicant is “actively seeking work and is . . . willing to quit college if offered suitable employment that would conflict with [her] college

schedule” is a factual determination. *Goodman v. Minn. Dep’t of Emp’t Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977).

At the time of the evidentiary hearing, Dungan attended classes Monday through Thursday, 6:00 p.m. to 10:30 p.m., and needed to study two to three hours each weekday. She testified that she searched for jobs online and applied for medical-records and medical-receptionist positions, a bus-driver position, and a kitchen-helper position in the school district in which she resided. Most of these positions required attendance at work until 4:00 p.m. or later. Dungan does not challenge the ULJ’s determination that suitable employment includes work on weekdays until 5:00 p.m. *See* Minn. Stat. § 268.085, subd. 15(d) (2012) (“An applicant who has restrictions on the hours of the day or days of the week that the applicant can or will work, that are not normal for the applicant’s usual occupation or other suitable employment, is not ‘available for suitable employment.’”). And Dungan does not argue on appeal that she was willing to discontinue her schooling to accept suitable employment.

In determining that Dungan was neither available for suitable employment nor actively seeking suitable employment, the ULJ weighed conflicting evidence and made a credibility determination. The ULJ noted that, in response to DEED’s pre-hearing questionnaire, Dungan listed her availability as 7:00 a.m. to 3:00 p.m. and corroborated that information during her testimony until the ULJ pointed out that Dungan’s hours of availability meant that she could not work in the majority of the jobs for which she applied. Dungan then testified that she could work until 5:00 p.m. without quitting school and that her previous statements were “a mistake.” The ULJ considered the evidence and

found “it unlikely that Dungan [was] available until 5 p.m. on weekdays when she stated on two different occasions before her hearing – and initially at her hearing – that her study time only left her available for employment before 3 p.m. on weekdays.” The ULJ found Dungan’s pre-hearing statements about her availability more credible than her hearing testimony and found that Dungan’s schooling was “a barrier to her accepting suitable employment” because it left her available to work only until 3:00 p.m. on a weekday. The ULJ concluded that Dungan was not actively seeking suitable employment because of her inability to work the listed hours for the majority of the positions for which she was applying.

“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2012). Here, the ULJ complied with Minn. Stat. § 268.105, subd. 1(c), by setting out in his decision his reasons for his credibility determination. The ULJ reasonably credited Dungan’s pre-hearing statements about her availability—statements that she made before she understood their consequences—and discredited her hearing testimony. If a ULJ has set out the reasons for crediting or discrediting testimony, “[w]e giv[e] deference to the credibility determinations made by the ULJ.” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted).

We conclude that the ULJ’s findings are supported by substantial record evidence and that the ULJ properly decided that Dungan is ineligible for unemployment benefits.

**Affirmed.**