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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1671**

Julie A. Bennett,
Relator,

vs.

Castle Kitchen Corporation,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed May 27, 2014
Affirmed
Chutich, Judge**

Employment and Economic Development
File No. 31193114-4

Julie A. Bennett, Minneapolis, Minnesota (pro se relator)

Castle Kitchen Corporation, Shakopee, Minnesota (respondent employer)

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

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Julie Bennett contests the unemployment-law judge's decision that she is ineligible for unemployment benefits. Because the unemployment-law judge properly concluded that Bennett was not actively seeking suitable employment during the period in question, we affirm.

FACTS

On August 25, 2012, Bennett worked a 12-hour shift at Castle Kitchen, preparing and selling food for the Renaissance Festival in Shakopee. Bennett was standing during the entire shift. After the shift, Bennett complained to Castle Kitchen about needing to take more breaks, and Castle Kitchen told her that she would receive all of her breaks at her next shift. Bennett quit working at Castle Kitchen after this one shift because she did not have transportation to the job from where she lived in Minneapolis.

Bennett has not worked since her August 25 shift at Castle Kitchen. Bennett temporarily moved to South Carolina in November 2012 to address some of her medical concerns and because she could not afford to stay in Minnesota. The record does not show when Bennett moved back to Minnesota.

Bennett applied for unemployment benefits from respondent Department of Employment and Economic Development (department), and the department determined in May 2013 that she was not eligible for benefits. Bennett appealed, and the unemployment-law judge conducted a telephone hearing in July 2013. Mary Struffert testified for Castle Kitchen.

Bennett testified that she has medical issues, including lupus, breast cancer, a hernia, and a back injury, that make it difficult for her to stand or sit for long periods. If she stands for too long, she “swell[s] on [her] legs and [her] knees.” Bennett can work up to five hours each day, but she cannot stand or sit for more than three hours at a time before needing to take a 15-20 minute break. Her doctors have not given her any work restrictions.

Bennett has experience in stocking, loading and unloading, packing, housekeeping, and childcare, and she has worked as a personal care attendant. She received her GED and attended two years of college. Bennett testified that, because of her medical conditions, she is able to do childcare, packing, and light warehouse work. She uses the bus for transportation. At the time of the telephone hearing, Bennett was living in a homeless shelter.

Bennett testified that, since May 5, 2013, she has been ready and willing to accept suitable employment and that she has spent “one to two hours” for “one to two days” each week looking for employment. She looks in the newspaper and on the Internet, and she has applied to at least nine jobs. Bennett has not had any interviews or offers, and she has not applied to jobs in-person.

The unemployment-law judge determined that Bennett quit working at Castle Kitchen “because of the distance of the employment to her residence”; “an average, reasonable worker” would not be compelled to quit for that reason; and Bennett “did not quit because of a good reason caused by the employer.” The unemployment-law judge further held, however, that Bennett quit her job within 30 days of starting because the

employment was unsuitable “given the distance of the employment to her residence,” and, therefore, Bennett “is not ineligible for benefits based on her reasons for separating from Castle Kitchen.” But the unemployment-law judge found that, because Bennett “was available for but not actively seeking suitable employment” beginning May 5, 2013 and continuing “until conditions change,” Bennett is ineligible for unemployment benefits.

This certiorari appeal followed.

D E C I S I O N

We review de novo an unemployment-law judge’s determination that an individual is ineligible to receive unemployment benefits. *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). We may affirm the unemployment-law judge’s decision, remand it for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or are unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2012).

We review the unemployment-law judge’s factual findings in the light most favorable to the decision and defer to the judge’s credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). When the evidence substantially sustains the unemployment-law judge’s findings of fact, we will not disturb them. *Id.*

Chapter 268 of the Minnesota Statutes, which governs unemployment benefits, is meant to assist those who are unemployed through no fault of their own. Minn. Stat.

§ 268.03, subd. 1 (2012). The chapter “is remedial in nature and must be applied in favor of awarding unemployment benefits,” and any provision precluding receipt of benefits must be narrowly construed. Minn. Stat. § 268.031, subd. 2 (2012).

Here, the unemployment-law judge’s reason for determining Bennett is ineligible was because she “was available for but not actively seeking suitable employment.” An applicant may be eligible for unemployment benefits if the applicant “was available for suitable employment” and “was actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4)–(5) (2012). Whether the applicant is available for and actively seeking suitable employment is primarily 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, 712 (Minn. App. 2010). As discussed below, the unemployment-law judge’s determination is substantially supported by evidence in the record.

Available for Suitable Employment

“Available for suitable employment” means that “an applicant is ready, willing, and able to accept suitable employment. . . . 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). “Suitable employment” means “employment in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2012).

The unemployment-law judge found that “Bennett has been available for suitable employment since May 5, 2013” and that “[p]art-time work is suitable for Bennett based on her work experience and physical fitness.”

Substantial evidence supports the unemployment-law judge’s determination. Bennett testified that, since May 5, 2013, she has been ready and willing to accept suitable employment. Bennett also stated that she can work up to five hours each day and that her doctors have not given her work restrictions. Bennett’s doctors provided verification to the department that she is able to work.

Actively Seeking Suitable Employment

“Actively seeking suitable employment” is defined as

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.”

Minn. Stat. § 268.085, subd. 16(a) (2012). The applicant’s efforts must include contacting previous employers when the applicant was laid off because of lack of work and seeking employment outside the applicant’s usual or customary occupation if reasonable job prospects in that occupation do not exist. *Id.*, subd. 16(b)–(c) (2012).

The unemployment-law judge determined that Bennett was not actively seeking suitable employment “[s]tarting May 5, 2013, through the date of the hearing, and continuing until conditions change.” She found that Bennett “has spent around one to four hours per week looking for work” and “has applied to around nine jobs total.” The

unemployment-law judge concluded that a person “in similar circumstances would make significantly more efforts if he or she was genuinely interested in obtaining suitable employment under the existing conditions in the labor market area.”

These findings are substantially supported by Bennett’s testimony. While we are sympathetic to Bennett’s situation and understand that she is in difficult living circumstances, Minnesota caselaw requires applicants to spend more than one to four hours per week looking for a job to be eligible for unemployment benefits. *See, e.g., Pyeatt v. State, Dep’t of Emp’t Servs.*, 263 N.W.2d 394, 395 (Minn. 1978) (holding that relator did not adequately look for work when he applied for six or seven positions over an eight-month period); *Monson v. Minn. Dep’t of Emp’t Servs.*, 262 N.W.2d 171, 172 (Minn. 1978) (holding that relator’s work search was inadequate in a two-month period where he researched a data bank for job opportunities, regularly consulted professional journals and newspaper employment notices, and applied for two or three positions in his field, but had not explored other possible positions and had signed up for retraining as an auto mechanic); *McNeilly*, 778 N.W.2d at 712 (concluding that relator failed to engage in reasonable efforts to find employment where he “asked around for work” but did not apply for positions); *James v. Comm’r of Econ. Sec.*, 354 N.W.2d 840, 841–42 (Minn. App. 1984) (holding that relator was not actively seeking work when, during a three-week period, relator contacted four employers by phone and visited the job-service office), *review denied* (Minn. Dec. 20, 1984).

As soon as Bennett devotes more time each week to her job search, she may contact the department to try to end the period of ineligibility. *See* Minn. Stat. § 268.085

(setting forth eligibility requirements). Because we defer to the unemployment-law judge's factual determinations and because evidence supports those determinations here, the unemployment-law judge properly concluded that Bennett is not entitled to unemployment benefits.

Affirmed.