

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1499**

Bruce S. Smith,  
Relator,

vs.

City of Minneapolis,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 15, 2008  
Affirmed  
Connolly, Judge**

Department of Employment and Economic Development  
File No. 6575 07

Bruce S. Smith, 1004 Emerson Avenue North, Minneapolis, MN 55411-4401 (pro se relator)

City of Minneapolis, c/o Talx UCM Services Inc., P.O. Box 283, St. Louis, Missouri 63166-0283 (respondent)

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

Considered and decided by Connolly, Presiding Judge; Kalitowski, 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## UNPUBLISHED OPINION

**CONNOLLY**, Judge

Relator challenges an unemployment-law judge's (ULJ) decision that he was ineligible for unemployment benefits because he was unable to work at his previous position, and because he was not actively seeking suitable employment. Because the ULJ's decision is supported by substantial evidence in the record, we affirm.

### FACTS

Relator Bruce Smith worked for the City of Minneapolis as a maintenance and construction worker. On November 8, 2006, relator underwent surgery to repair nerve damage in his right arm. The nerve damage was not work-related. Before undergoing surgery, relator established a benefit account with the Minnesota Department of Employment and Economic Development (DEED). When discharged from the hospital on November 9, 2006, relator was under a complete lifting restriction. On November 12, 2006, relator's doctor submitted paperwork indicating that relator would be unable to perform any type of work involving lifting until January 2, 2007.

On January 2, 2007, relator was authorized by his doctor to return to work with a 25-pound lifting restriction on his right arm. This lifting restriction was eased to 50 pounds on March 19, 2007. On April 30, 2007, relator's doctor authorized him to return

to work without restrictions. Relator then returned to his previous position with the city on May 1, 2007.<sup>1</sup>

A DEED-adjudicator initially determined that relator was ineligible for benefits from November 8, 2006 through February 9, 2007 because he was not able to work during that period. Relator appealed and, after a de novo hearing, a DEED-ULJ found that relator was unable to work from November 8, 2006 through January 8, 2007 and was therefore ineligible for unemployment benefits. Relator filed a request for reconsideration with the ULJ. After taking into consideration new evidence from relator, the ULJ affirmed her initial decision, finding that relator was “clearly prevented from returning to work in his usual occupation” and that relator “offered no evidence reflecting that he was engaged in an active work search for other employment.” This appeal follows on a writ of certiorari relator obtained under Minn. Stat. § 268.105, subd. 7(a) (2006), and Minn. R. Civ. App. P. 115. DEED is the primary party to any judicial action involving a ULJ’s decision. Minn. Stat. § 268.105, subd. 7(e) (2006).

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

When reviewing the decision of a ULJ, this court may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other

---

<sup>1</sup> According to city policy, employees receiving treatment for non-work-related injuries may not return to work for the City of Minneapolis in labor-intensive positions until all medical restrictions have been lifted.

error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2006).

Whether an employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court views the ULJ’s factual findings in the light most favorable to the decision. *Skarhus v. Davanni’s*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)). This court also gives deference to credibility determinations made by the ULJ. *Id.* As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5) (2006).

Relator now seeks benefits from the Minnesota Unemployment Trust Fund. *See* Minn. Stat. § 268.194, subd. 1 (2006) (establishing trust fund). The statute governing the fund specifies that benefits are payable *only* if each of five listed requirements is met. Minn. Stat. § 268.069, subd. 1 (2006). One of these five prerequisites is that “the applicant has met all of the ongoing eligibility requirements under sections 268.085 and 268.086.” Minn. Stat. § 268.069, subd. 1(3). Under these requirements, an applicant is eligible for benefits if he “was *able to work* and was available for suitable employment, and was *actively seeking suitable employment*.” Minn. Stat. § 268.085, subd. 1(4) (2006) (emphasis added). Relator argues that the ULJ’s decision is unsupported by substantial evidence because the evidence shows that he was able to work and that he was actively seeking suitable employment.

**1. Relator was not able to work.**

“Able to work” means “an applicant has the physical and mental ability to perform (1) the usual duties of the applicant’s usual occupation or (2) the usual duties of work that is gainful employment engaged in by others as a means of livelihood.” *Id.*, subd. 14(1) (2006).

The ULJ found that relator’s lifting restrictions “clearly prevented him from work in his usual occupations. And, [relator] offered no evidence that he requested other work from the City of Minneapolis” that would have complied with his lifting restrictions. Relator clearly could not return to work at his job with the City of Minneapolis because of its policy preventing employees who are receiving treatment for non-work-related injuries from returning to work in labor-intensive positions until all medical restrictions have been lifted. Before working for the city, relator worked at a variety of labor-intensive jobs. Examples include employment stints as a housecleaner, floor buffer, and general laborer.<sup>2</sup> Given that all of these positions are labor intensive and presumably involve lifting, the ULJ’s finding that relator was prevented from working in his usual profession under subdivision 14(1) is supported by substantial evidence. But neither the ULJ nor relator argues that relator’s restrictions prevented him from undertaking the usual duties of work that is gainful employment engaged in by others as a means of livelihood under subdivision 14(2). Thus, the inquiry turns to whether the ULJ’s decision that relator was not actively seeking suitable employment is supported by substantial evidence.

---

<sup>2</sup> Relator listed his usual occupation as “laborer.”

**2. Relator was not actively seeking suitable employment.**

To collect unemployment benefits, an applicant must, among other things, “actively see[k] suitable employment.” Minn. Stat. § 268.085, subd. 1(4). “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) (2006). “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) (2006). If an applicant has difficulty finding employment, then employment at “lower skill or wage levels is suitable if the applicant is reasonably suited for the employment considering the applicant’s education, training, work experience, and current physical and mental ability.” *Id.*, subd. 23a(b) (2006). The ULJ found that relator offered no evidence “that he was engaged in an active work search for other employment.”

Relator did not provide any evidence that he engaged in an active job search for suitable employment between November 8, 2006, and January 8, 2007, until after his appeal hearing in front of the ULJ on May 14, 2007.<sup>3</sup> At that time, relator faxed to the ULJ a handwritten list of potential employers where he alleged he had applied for work.

---

<sup>3</sup> Relator apparently compiled this list from memory, stating, “I didn’t know I had to keep a log of it, but for some strange reason, I remember the places that I’ve been, so.”

Apparently, the ULJ did not find relator's document credible because the ULJ did not find that relator was engaged in the active search for work. *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) ("The finder of fact is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility."). Even assuming that the list is accurate, relator's search did not constitute a "reasonable, diligent effort[] an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions" because relator did not establish in either his testimony or submissions to the ULJ that he was qualified for any of the positions he applied for.

Because the ULJ's findings that relator was not able to work at his usual occupation and was not engaged in an active search for suitable employment is supported by substantial evidence, we affirm.

**Affirmed.**