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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1655**

Deborah L. Briggs,
Relator,

vs.

Top Temporary Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 25, 2009
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 20849336-3

Deborah L. Briggs, 941 Woodlynn Avenue, Roseville, MN 55113 (pro se relator)

Top Temporary Inc., 1759 Lexington Avenue North, Roseville, MN 55113 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Johnson, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Pro se relator Deborah L. Briggs challenges the unemployment-law judge's determination that because she failed to accept an offer of suitable employment without good cause, she was ineligible for unemployment benefits. We affirm.

DECISION

Relator established an unemployment benefit account with respondent Department of Employment and Economic Development (department) effective December 23, 2007, after her temporary employment as an actress in a production of "A Christmas Carol" came to a close. On January 7, 2008, a staffing specialist for relator's temporary employer, respondent Top Temporary Inc. (Top Temporary), contacted relator by telephone to inform her of an available "long-term, temporary" administrative assistant position. Relator declined the job and Top Temporary contested relator's unemployment benefit eligibility. Following an evidentiary hearing in May 2008, an unemployment-law judge (ULJ) determined that relator was ineligible for unemployment benefits under Minn. Stat. § 268.085, subd. 13c (2008), because she failed to accept an offer of suitable employment without good cause. Relator requested reconsideration of the ULJ's decision, but the ULJ's findings and decision were affirmed.

Relator contends on appeal that (1) she is a "seasonal employee," and therefore, "suitable employment" consists of temporary positions that pay at least 150% of the weekly benefit amount, under Minn. Stat. § 268.035, subd. 23a(d) (2008); and (2) the position offered to her by Top Temporary was not "suitable employment" for her because

the offered pay rate did not equal 150% of her weekly benefit amount and because it was not in her occupational field of acting.

In reviewing the decision of the ULJ:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may 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 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) (2008); *see Ywsyf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (applying this standard).

This court views the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

Seasonal Employee

Relator argues that she is "seasonally unemployed" because she worked as an actress in the production of "A Christmas Carol" during the winter holiday season and as an actor at a resort in Alaska for at least one summer. Therefore, relator argues, under

Minn. Stat. § 268.035, subd. 23a(d), she was only required to accept temporary positions that pay at least 150% of her weekly benefit amount. We disagree.

The ULJ specifically noted that a “role in the Christmas Carol may be a seasonal job.” But the record indicates that in addition to intermittent acting jobs during the summer and winter, relator’s recent work history includes two temporary administrative positions that are not contingent on any particular season. Because relator’s work history indicates that she accepted at least two temporary administrative positions between December 2006 and November 2007, we conclude that relator is not “seasonally unemployed” for purposes of Minn. Stat. § 268.035, subd. 23a(d).

Suitable Employment

Relator argues that the administrative assistant position offered to her was not suitable employment. We disagree. If a person fails to accept an offer of suitable employment without good cause, she is disqualified from receiving unemployment benefits for eight calendar weeks. Minn. Stat. § 268.085, subd. 13c(a)(2). “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); *see, e.g., Preiss v. Comm’r of Econ. Sec.*, 347 N.W.2d 74, 76 (Minn. App. 1984) (noting “suitable work” is defined as work an employee customarily performs or is fit to perform). In determining whether any employment is suitable for an applicant, the applicant’s prior training, experience, prospects for securing employment in his or her customary occupation, and the distance of the employment from the applicant’s residence are considered. *Id.*

Top Temporary offered relator the same position in which Top Temporary had previously employed her—administrative assistant—at a wage of \$12 per hour. At the time of the offer, relator had experience as an administrative assistant, had previously been paid a similar wage in previous administrative jobs, and had no other job offers. The location of Top Temporary’s employment offer was near her Roseville residence.

Although relator would prefer to primarily work as an actor, her work history indicates that she is both qualified and experienced for employment as an administrative assistant, and had previously been paid a similar rate for a similar job. On these facts, we conclude that Top Temporary presented relator with an offer of suitable employment.

Good Cause

In addition, relator did not have good cause to reject Top Temporary’s offer of temporary, long-term employment on the grounds that she potentially had a future offer of employment from a theater company and she had auditions scheduled in February 2008.

When a suitable offer has been made, relator must show that she had good cause to reject the offer. *See Lewis v. Minneapolis Moline, Inc.*, 288 Minn. 432, 435-36, 181 N.W.2d 701, 704 (1970). Whether relator had good cause to refuse Top Temporary’s offer of suitable employment is a question of law that this court reviews de novo. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996). Generally, “good cause” is a reason that would cause a reasonable individual to decline to accept or avoid suitable employment, including that “the applicant is employed in other suitable employment.”

Minn. Stat. § 268.085, subd. 13c(b). The burden of proof is on the claimant to show good cause for refusing suitable work. *Preiss*, 347 N.W.2d at 76.

The statutory definition of “good cause” does not include “potential employment offers.” See Minn. Stat. § 268.085, subd. 13c(b) (defining “good cause”). And “good cause” does not include an employee’s decision to wait for a better opportunity. *Preiss*, 347 N.W.2d at 77. Here, Top Temporary offered relator a position as an administrative assistant in January 2008. But relator declined the job offer because: (1) she felt the position did not pay enough; (2) she had a trip planned in February 2008 for auditions that could lead to acting work; and (3) she was in communication with an individual who she believed would offer her a job in the acting field. Relator concedes that in January she had no job offer from any theater company and no promise of employment through her future auditions. Because the offered position paid an hourly wage equivalent to administrative jobs relator had previously held and because “good cause” does not include potential job offers, we conclude that relator has failed to show that she had good cause to refuse Top Temporary’s job offer.

In conclusion, we affirm the ULJ’s determination that relator did not have good cause to reject Top Temporary’s suitable offer of employment and was, therefore, disqualified from receiving unemployment benefits under Minn. Stat. § 268.035, subd. 23a(a).

Affirmed.