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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1257**

David Fiedler,
Relator,

vs.

Metropolitan Productions Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 18, 2010
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 22173163

Howard L. Bolter, Borkon, Ramstead, Mariani, Fishman & Carp, Ltd., Minneapolis,
Minnesota (for relator)

Metropolitan Productions, Inc., Minneapolis, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the determination of an unemployment law judge (ULJ) that he was ineligible for benefits while he was in Spain because he was not “available for suitable employment.” Because relator’s travel to Spain placed him outside his labor market area for personal reasons, we affirm.

FACTS

Relator David Fiedler was employed as a web developer for respondent Metropolitan Productions, Inc. from February until October 30, 2008. On October 26, relator applied for benefits and established an unemployment benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED initially determined that relator was eligible for benefits.

From January 28 until March 25, 2009, relator was in Barcelona, Spain. Relator claims that he went to Spain to search for work. At the time he left Minnesota, he had never lived in Spain, did not speak Spanish, and had no Spanish work visa. Relator had done some work for Spanish companies in the past, but had no other ties to Spain.

While in Barcelona, relator met with a Spanish company six times, and interviewed with a recruiting firm. None of these contacts resulted in any job offers. Relator searched for employment in the United States using the Internet and telephone, and told potential employers that he was willing to fly back to the United States on 24-hours’ notice for a personal interview.

Upon his return to Minnesota, relator continued to apply for jobs in the Midwest and California. He eventually obtained employment with a Chicago-based company that he contacted while he was in Spain.

On April 15, 2009, DEED informed relator that he was ineligible for unemployment benefits during the three months that he was in Spain because he was not “available for suitable employment” as required by Minn. Stat. § 268.085, subd. 1(4) (2008).¹ Relator appealed DEED’s determination, and an evidentiary hearing was conducted. The ULJ issued her findings of fact and decision on May 14, 2009, affirming DEED’s determination of ineligibility. On relator’s reconsideration request, the ULJ affirmed that relator was ineligible for unemployment benefits while he was in Spain. This certiorari appeal follows.

DECISION

This court reviews a ULJ’s decision to determine whether the findings, 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 and capricious.” Minn. Stat. § 268.105, subd. 7(d) (2008). We review questions of law de novo, but will uphold the ULJ’s findings of fact if they are supported by substantial evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). We view a ULJ’s factual

¹ The ULJ found that relator was “actively seeking suitable employment” as required by Minn. Stat. § 268.085, subd. 16 (2008). That determination is not at issue in this appeal.

findings in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

To be eligible for unemployment benefits, an applicant must meet the eligibility requirements established in Minn. Stat. § 268.085 (2008). One of these requirements is that the applicant be “available for suitable employment.” Minn. Stat. § 268.085, subd. 1(4). A person is “available for suitable employment” when:

(a) [The] applicant is ready and willing to accept suitable employment in the labor market area. 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). When an applicant is “absent from the labor market area for personal reasons, other than to search for work,” the applicant is not “available for suitable employment.” *Id.*, subd. 15(c).

Relator challenges the ULJ's determination that relator was outside of his labor market while in Spain, asserting that because he works via the Internet, his labor market is the entire world and traditional geographic boundaries do not apply to him. We disagree. While relator's contention that “once hired . . . he could work from almost any location in the world,” may be correct, that is not the point. The critical inquiry is whether relator was away from the labor market at the time he was supposed to be available for new employment. And while his argument that Internet-based employment knows no geographic borders may be accurate as a matter of fact, we are not persuaded that the ULJ erred in applying section 268.085 to include a geographic component. The

statute requires a person seeking Minnesota unemployment benefits to both demonstrate a genuine attachment to “the workforce” and to be present in “the labor market area.” Minn. Stat. § 268.085, subd. 15(a), (c).

The ULJ’s finding that relator was outside the labor market is supported by substantial record evidence. Relator’s last three jobs prior to his period of unemployment were in Minnesota. He had resided in Minnesota for approximately two years before departing for Spain. Before that time, he worked for web developers in Nebraska, California, Belize, Canada, and Minnesota. He had never worked in Spain, had no visa to work there, and did not speak the language. Moreover, relator’s argument assumes that both the Spanish government and potential employers from all over the world would allow him to work from Spain. He presents no evidence on either point.

The ULJ did not expressly find that relator was in Spain for personal reasons, but this finding is implicit in the ULJ’s determination that relator was not available for suitable employment and supported by substantial evidence. The record evidence demonstrates that relator traveled to Spain for personal reasons. Relator did not speak Spanish upon his arrival, and he only pursued employment opportunities with one Spanish employer and one Spanish recruitment agency. Relator spent most of his days attending Spanish language classes and searching for jobs located within the United States. The record is void of any evidence that relator needed to travel to Spain in order to pursue his employment search.

The statute also requires that there 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). Relator’s presence in Spain while seeking jobs in the United States created a self-imposed restriction. The separation occasioned by distance and time zones is reasonably viewed as an impediment to obtaining employment within the United States, where the bulk of relator’s employment efforts were directed. And given the realities of a competitive job market, it is reasonable to assume that employers are more likely to consider applicants who do not have to fly from another continent in order to be interviewed. Relator’s decision to spend three months in Spain created an impediment that prevented him from accepting suitable employment.

On this record, we conclude that the ULJ’s determination that relator was not available for suitable employment because he was absent from the labor market is supported by substantial evidence and not contrary to law.

Affirmed.