STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1986

Sandra Haub,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

Filed June 9, 2014
Reversed
Stauber, Judge

Department of Employment and Economic Development
File No. 31312513-2

Robert D. Richman, St. Louis Park, Minnesota (for relator)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In a certiorari appeal from a determination of ineligibility on grounds that relator was not actively seeking employment, relator argues that the decision was erroneous because her documented work- search activities fulfilled her DEED-approved work

search plan and that she is entitled to an evidentiary hearing so that the unemployment-law judge may consider her work-search plan. We reverse.

FACTS

In June 2012, relator Sandra Haub was laid off from her position as manager of a bank's estate processing and resolution team. Relator has worked in the financial services industry for almost 30 years and is licensed by the Financial Industry Regulatory Authority to manage and engage in securities transactions. Relator received severance pay for several months and then applied for unemployment-insurance benefits in November 2012.

Relator collected unemployment-insurance benefits until May 15, 2013, when the Department of Employment and Economic Development (DEED) sent relator a notice stating that she was ineligible for unemployment benefits because she had been working more than 32 hours per week in self-employment. Relator was further notified that because she failed to disclose the total hours that she worked, she was required to pay a fraud penalty. The ineligibility determination was based upon relator's work in a liquor store she and her business partner purchased and began operating in October 2012.

Relator appealed the determination, and a de novo hearing was held before a ULJ on May 31, 2013. Relator appeared pro se, and her business partner appeared to testify as a witness. In response to the allegation that she was working too many hours, relator submitted a spreadsheet detailing the hours that she worked at the liquor store and the activities she undertook to find a job in the financial-services industry. At the start of the hearing, the ULJ told relator that the hearing would cover "whether [relator] was working

32 or more hours per week in employment," but added that "[t]here appear to be related issues surrounding [relator's] availability for suitable employment and [her] work search." After some discussion, relator stated that she was "comfortable with" discussing her work-search activities.

Relator testified that she and her business partner, who had also worked with her at the bank, began considering purchasing a business together when their employer began laying off workers in 2011. She testified that in April or May of 2012, DEED representatives visited her worksite to provide counseling on unemployment-insurance benefits and that she and her partner consulted DEED representatives about starting a business. On October 8, 2012, relator and her partner closed on their purchase of the liquor store and began operating the store on the same day, but the store needed many repairs and was not initially profitable. Relator testified that she needed a job and was looking for work in the financial-services industry. Relator's business partner testified that they worked opposite hours so that neither worked more than 32 hours per week at their liquor store and that family members and friends volunteered to operate the store when they were not working. Relator testified that she did not attempt any additional work-search activities other than what was shown on her spreadsheet, but pointed out that the top of the spreadsheet lists websites that she frequently checked, and that she was "constantly" networking with friends, former coworkers, and her liquor-store distributors.

On June 10, 2013, the ULJ issued a decision finding relator ineligible for unemployment benefits. The ULJ concluded that relator was working only 30 hours per week at her liquor store, and therefore, relator was not overpaid employment benefits due

to fraud. But the ULJ found that relator was not actively seeking suitable employment based upon her documented work-search activities. The ULJ found that relator "had 12 employer contacts during the 24 weeks" that she received unemployment benefits. The ULJ concluded that this number of employer contacts did not demonstrate "reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment." The ULJ added that "[w]hile internet job searches, networking, and job-search training are a part of any work search, the reasonable, diligent efforts of an individual in similar circumstances who was genuinely interested in obtaining suitable employment must include regular contacts with employers who are likely to be hiring."

Relator appealed the determination of ineligibility and sought an additional evidentiary hearing so that the ULJ could consider relator's work plan, which was earlier approved by DEED. The ULJ declined to hold an additional evidentiary hearing because he concluded that the evidence would not have an effect on the outcome of the case. The ULJ found that the plan showed what activities relator was supposed to do, but that "a plan to actively seek suitable employment is not the same as actively seeking suitable employment." The ULJ also reaffirmed his finding that the evidence did not support that relator was actively seeking work, concluding that relator's employer contacts did not reach an adequate number of prospective employers and that "the purpose of the unemployment program is not to subsidize a business, but to provide a temporary partial wage replacement to assist the unemployed worker to become reemployed." This certiorari appeal followed.

D E C I S I O N

When reviewing an unemployment-insurance-benefits decision, this court may affirm the decision, remand for further proceedings, reverse, or modify the decision if the relator's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based upon unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2012). This court reviews de novo the legal conclusion that an applicant is ineligible to receive unemployment benefits. *Grunow v. Walser Auto. Grp. LLC*, 779 N.W.2d 577, 579 (Minn. App. 2010). Whether an applicant was actively seeking suitable employment is a factual determination. *See McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 711–12 (Minn. App. 2010) (discussing the evidence necessary to sustain a finding that an applicant was not actively seeking employment). This court "review[s] the ULJ's factual findings in the light most favorable to the decision." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). This court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The purpose of the unemployment-insurance program is 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 benefits, and any provision precluding receipt of benefits must be narrowly construed. Minn. Stat. § 268.031, subd. 2 (2012). There is no burden of proof in unemployment-insurance

proceedings and no presumption of entitlement to unemployment benefits. Minn. Stat. § 268.069, subd. 2 (2012). There is no equitable or common-law basis to allow or deny unemployment benefits. *Id.*, subd. 3 (2012).

Relator argues that the ULJ's finding that she was not actively seeking suitable employment is unsupported by substantial evidence.

> "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."

Minn. Stat. § 268.085, subd. 16(a) (2012). There is no bright-line definition of what constitutes actively seeking suitable employment, but Minnesota caselaw indicates that merely looking at online and newspaper employment listings, contacting acquaintances, and applying for a few positions is not sufficient. *See Pyeatt v. State, Dep't of Emp't Servs.*, 263 N.W.2d 394, 395 (Minn. 1978) (affirming the finding that the relator's job search was inadequate 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 applicant was not actively seeking suitable employment in a two-month period where he researched a data bank for employment opportunities, regularly consulted professional journals and newspaper employment notices, and made two or three unsuccessful applications for positions in his field); *McNeilly*, 778 N.W.2d at 712 (affirming a determination that a landscaper who had applied for unemployment benefits

during the off-season had not actively sought employment when his job-search efforts consisted of "ask[ing] around for work"); *James v. Comm'r of Econ. Sec.*, 354 N.W.2d 840, 841–42 (Minn. App. 1984) (concluding that relator who, during a three-week period, made phone contact with four employers and visited the job-service office twice was not actively seeking suitable employment), *review denied* (Minn. Dec. 20, 1984). However, when an applicant made "multiple telephone and in-person 'networking' contacts with five prospective employers [two of which reached a network of over 100 publications] . . . had formal interviews with one employer . . . interviewed for an out-of-town position," and attempted to become self-employed over an 11-week period, this court concluded that the applicant had been actively seeking employment. *Decker v. City Pages, Inc.*, 540 N.W.2d 544, 549–50 (Minn. App. 1995), *superseded by rule on other grounds as recognized by Mueller v. Comm'r of Econ. Sec*., 633 N.W.2d 91, 93 (Minn. App. 2001).

Relator asserts that the ULJ's finding was in error because she fully complied with her DEED-approved work-search plan and should be entitled to rely upon the plan. We agree. On February 13, 2013, relator received a letter from DEED stating that her "Work Search Plan has been approved." The letter included a copy of the approved plan, which required relator to register at and post her resume on an employment website, look for jobs through that website, contact employers in her field "in person, on the internet, by phone or by mail," search internet job sites, monitor company websites, visit a WorkForce Center, and to connect with certain networking contacts. Relator's testimony and spreadsheet provides substantial evidence to support that relator performed the tasks

required of her. Moreover, relator's spreadsheet indicates that she made 21 contacts with 12 different employers over a period of 6 months either in person, by mail, or by phone. This evidence contradicts the ULJ's finding that relator only made a total of 12 contacts over that same period.

But DEED argues that relator's efforts at finding a job were too minimal despite her compliance with the DEED-approved work plan. DEED asserts that, merely by looking at relator's own spreadsheet, relator spent "at most, one to two hours per week looking for more work." And the work plan states that "[l]ooking for work is a *full-time job!* . . . [w]e suggest you spend at least 30 hours a week on your job search." According to DEED, the plan is merely a jumping-off point for applicants, and that the "details—actually carrying out the plan—are left to the applicant to determine." But relator's spreadsheet shows that she regularly checked employer websites for job postings, had set up an email alert on two websites for jobs relevant to her experience, and then did two or three other activities each week such as "stop[ping] in" at an employer's office, mailing a resume and job application, or participating in an online training session. Relator also testified that, in addition to these activities, she frequently networked with former coworkers, friends, and family. We conclude, based on this record, that relator's job-search efforts and 21 employer contacts substantially support a finding that she was actively seeking work. *See Decker*, 540 N.W.2d at 549 (concluding that five employer contacts in an eleven-week period was sufficient to find that the applicant was actively seeking work); *see also Neumann v. Dept. of Emp't & Econ. Dev.*, 844 N.W.2d 736, 737 (Minn. App. 2014) (concluding that five to ten hours per week that slowed to 30 minutes

per day was sufficient to show that the applicant was actively seeking employment considering the availability of work in the applicant's area).

Moreover, DEED's assertion that an applicant must spend 30 hours per week looking for work in order to be considered actively seeking employment is not supported by Minnesota law. The unemployment-insurance statute does not define "actively seeking suitable employment" in terms of hours expended conducting a job search. Minn. Stat. § 268.085, subd. 16(a). Rather, the statutory definition looks to those "efforts an individual in similar circumstances would make . . . under the existing conditions in the labor market area." *Id.* The unemployment-insurance statute also permits applicants to work in self-employment up to 32 hours per week, which implies that an applicant may remain eligible for unemployment benefits even if she expends less than 30 or 40 hours per week looking for work. Minn. Stat. § 268.085, subd. 2(6) (2012). The ULJ found that relator had not made efforts consistent with what a similarly situated applicant would make, but made no findings regarding the existing conditions in the labor market with respect to relator's job field. *See Neumann*, 844 N.W.2d at 739 ("Caselaw implicitly supports the rule that ineligibility determinations must consider the number and scope of employment options available to an applicant in addition to the number of applications submitted or time expended."). There was no evidence, and the ULJ made no finding, that relator failed to apply for positions that were presently available. *Cf. Pyeatt*, 263 N.W.2d at 395 (affirming conclusion that applicant was not actively seeking work when he applied for six or seven positions in eight months and the evidence showed that there

were 25 positions available). And the ULJ expressly found that relator was working fewer than 32 hours per week in self-employment.

Because we conclude that the ULJ clearly erred by finding that relator was not actively seeking suitable employment based upon her well-documented work search efforts, we reverse the ULJ's ineligibility determination. Because we reverse, we decline to order an additional evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2012) (requiring an additional evidentiary hearing where new evidence would likely change the outcome of the decision).

Reversed.