STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1098

Latrice Jones,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

Filed February 21, 2012
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 27087019-3

Latrice Jones, Minneapolis, Minnesota (pro se relator)

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

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

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

CONNOLLY, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator was ineligible for unemployment benefits because she was not available for or actively

seeking suitable employment. Because we conclude that relator is ineligible for unemployment benefits, we affirm.

FACTS

Relator Latrice Jones worked as a transportation security officer from January 2006 to December 2010. The job requires standing, bending, squatting, and lifting heavy luggage. Relator suffers from lumbar disc degeneration. On December 16, 2010, she was placed on medical restrictions, which included working only in a seated position, not lifting more than 20 pounds, and taking two or three days off work when her back pain occurred.

She applied for an unemployment benefit account. On her application, she answered "No" to the questions, "Are you seeking work in your usual occupation?" and "Are you able and willing to perform work other than you[r] usual occupation?" She answered the question "What are your plans for finding employment?" with "I'm looking for a seated security position," and the question "What are your plans for finding employment?" with "I only have experience in security. I am not trained in any other areas." When asked to list her efforts to find employment from December 1, 2010, to February 5, 2011, relator said she called one firm on December 20, 2010, and that firm was not hiring. Based on this information, relator was determined to be ineligible for benefits because she was not available for work and was not actively seeking suitable employment.

Relator appealed from the determination of ineligibility, stating on her application that she had not yet found affordable childcare and had been in a homeless shelter. A

telephone hearing was scheduled for March 14, 2011. During the hearing, when the ULJ asked relator, "Since January 9 of 2011, have you applied for any jobs?", relator answered, "The only job I've applied for is [at one security firm] . . . ." She said she had applied for a position "where you sit down, and you just watch the security screens." She also said she had applied for the job around January 11 and that she "only applied for one job in January . . . ." When asked, "[W]hat jobs, other than sitting and doing security work, do you think you could perform with the work restrictions that you have?", relator said, "I think I could do . . . telemarketing" but, when asked if she had applied for telemarketing jobs, said "I haven't applied for any of those positions." When asked what jobs she had applied for, relator said she could not find her paperwork.

Because relator did not have childcare available and was interrupted during the telephone hearing, the ULJ offered to reschedule it for three days later. The ULJ told relator she would need to be free from interruptions at that time and that the questioning about her job search would be resumed. Relator was not available when the hearing was to resume and did not answer either of the phone messages left by the ULJ.

Based on the evidence from relator's application for benefits and her testimony at the hearing, the ULJ found that relator "does not have suitable childcare and therefore has limited work availability" and "has not been actively seeking suitable employment . . . as she has only applied for one job." The ULJ concluded that relator did not meet the requirements of being available for suitable employment and actively seeking suitable employment and was not eligible for benefits "until conditions change."

About two weeks after the ULJ issued her opinion, relator submitted a record of her search for work. This record indicated that, in addition to her January application for a job as a security guard, relator applied on February 8 and February 10 for security guard jobs and on January 19, February 3, February 5, February 9, February 10, February 15, March 3, March 4, and March 14 for jobs as a truck driver or bus driver. Relator offers no explanation of why she did not provide this information to the ULJ prior to the hearing, tell the ULJ about any of these applications during the hearing, or make herself available for the rescheduled hearing.

Relator requested reconsideration of the ULJ's decision, saying she could not find relevant information at the time of the hearing but had since submitted it. The ULJ affirmed, and relator now challenges the determination of her ineligibility.

D E C I S I O N

"An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law." *Irvine v. St. John's Lutheran Church*, 779 N.W.2d 101, 103 (Minn. App. 2010).

To be eligible for benefits, an applicant must be "available for suitable employment." Minn. Stat. § 268.085, subds. 1(4), 15 (2010). Eligibility also requires that an applicant be "actively seeking suitable employment." *Id.*, subds. 1(5), 16 (2010). The ULJ based her initial decision that relator was ineligible for benefits because she was not available for or actively seeking suitable employment on relator's application and her hearing testimony.

Relator's application indicated that she was not seeking work in her usual occupation, was not willing to perform work in another occupation, was looking only for a security position where all the work could be done while seated, and had limited her job search to one call to one security firm. She testified that she had applied for only one job, a security job limited to watching screens, that she had applied for the job in January, that she thought she could also do telemarketing but had not sought any telemarketing jobs, and that she could not discuss her job search because she could not find her paperwork.

Because relator did not have childcare available and was interrupted during the hearing, the ULJ rescheduled another hearing for three days later and told relator she would need to be free from interruptions and that the questioning about her job search would resume. Relator was not available for the hearing at the scheduled time and did not reply to either of the ULJ's two phone messages. But the testimony relator did provide and her application both support the ULJ's decision.

Although relator told the ULJ on March 14 that she had applied for only one security job since January 9, on March 31 she reported by fax, in support of her request for reconsideration, that she had also applied for security jobs twice in February and for driving jobs once in January, five times in February, and three times in March. But "[i]n deciding a request for reconsideration, the [ULJ] must not . . . consider any evidence that was not submitted at the evidentiary hearing." Minn. Stat. § 268.105, subd. 2(c) (2010). While a ULJ may consider new evidence to determine whether to order an additional evidentiary hearing, such a hearing is necessary only when the applicant shows "that evidence which was not submitted at the evidentiary hearing . . . would likely change the

outcome of the decision and there was good cause for not having previously submitted that evidence . . . ." *Id.* Relator did not explain why the faxed information contradicted her hearing testimony, why that information would change the outcome, or why she had not provided that information earlier. The ULJ did not err by not considering information provided after the hearing.

Affirmed.