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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-788**

Michael Padmore,  
Relator,

vs.

Department of Employment and  
Economic Development,  
Respondent.

**Filed February 6, 2012  
Affirmed  
Johnson, Chief Judge**

Department of Employment and Economic Development  
File No. 27049643-3

Michael Padmore, New Hope, Minnesota (pro se relator)

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

Considered and decided by Johnson, Chief Judge; Wright, Judge; and Schellhas,  
Judge.

**UNPUBLISHED OPINION**

**JOHNSON**, Chief Judge

Michael Padmore sought unemployment benefits while he was a student. An  
unemployment law judge determined that Padmore was ineligible on the ground that he

was not sufficiently available for employment because his classes interfered with his ability or willingness to accept suitable employment. We affirm.

### **FACTS**

In September 2009, Padmore enrolled as a student in the nursing program at the Hennepin County Technical College. Between October 15, 2010, and January 14, 2011, he was employed by Independent School District No. 281 as an education assistant. During the fall semester of 2010, he took classes while he was employed.

On January 14, 2011, Padmore was terminated from his job with the school district. In the spring semester of 2011, he took classes on Monday and Tuesday evenings and Thursday and Friday afternoons.

Padmore applied for unemployment benefits for the week beginning January 23, 2011. The Department of Employment and Economic Development (DEED) determined that Padmore was ineligible for benefits because he was unwilling to quit school to accept suitable employment. An unemployment law judge (ULJ) upheld that determination after Padmore brought an administrative appeal and a subsequent request for reconsideration. Padmore appeals to this court by way of a writ of certiorari.

### **DECISION**

Padmore argues that the ULJ erred by determining that he is ineligible for unemployment benefits based on a finding that he was not willing to quit school to accept suitable employment.

This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are

unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2010). We view the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb the ULJ's findings when they are supported by substantial evidence in the record. *Id.* The ultimate determination whether an employee is eligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.*

To be eligible for unemployment benefits, an applicant must be, among other things, "available for suitable employment," Minn. Stat. § 268.085, subd. 1(4) (2010), which requires the applicant to be "ready and willing to accept suitable employment," *id.*, subd. 15(a). As a general rule, employment is deemed "suitable" if, among other things, it is "in the applicant's labor market area" and "is reasonably related to the applicant's qualifications." Minn. Stat. § 268.035, subd. 23a(a) (Supp. 2011). In addition, to be available for suitable employment, "there must 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).

The suitability of employment also depends on whether the work is offered on a full-time or part-time basis. If a majority of the applicant's weeks of employment in the base period consist of part-time work, then "suitable employment" for that applicant is part-time work. *See* Minn. Stat. § 268.035, subd. 23a(e) (Supp. 2011). By implication, if the majority of an applicant's weeks of employment in the base period consist of full-time work, then "suitable employment" for that applicant is limited to full-time work.

*See id.* In this case, the ULJ found that the majority of Padmore’s wages in his base period were from full-time employment. This finding is not challenged on appeal. Thus, to be available for suitable employment, Padmore must be available for full-time employment.

The relevant statute includes a provision specifically applicable to students seeking unemployment benefits:

[T]o be considered “available for suitable employment,” a student who has regularly scheduled classes must be willing to discontinue classes to accept suitable employment when:

- (1) class attendance restricts the applicant from accepting suitable employment; and
- (2) the applicant is unable to change the scheduled class or make other arrangements that excuse the applicant from attending class.

Minn. Stat. § 268.085, subd. 15(b) (2010).

This statute is the legal basis of the ULJ’s determination that Padmore is ineligible for unemployment benefits. The ULJ found that “Padmore’s school activities affect his job search because his school schedule conflicts with the anticipated job schedule.” The ULJ further found, “Although Padmore is willing to rearrange his school schedule, he is not willing to quit school, and Padmore could not fit forty hours of employment into his schedule without quitting school.” The ULJ then concluded, “Therefore, Padmore is not available for suitable employment.”

Padmore contends that the ULJ erred because the evidence in the agency record shows that he was willing to quit school for the purpose of accepting suitable

employment. He states in his brief to this court, “I have at all times stated . . . that I am willing to quit school to accept employment.” But the evidence in the agency record does not support Padmore’s argument. In fact, the evidence in the agency record contradicts Padmore’s argument and supports the ULJ’s findings.

Padmore responded in writing to DEED’s questionnaire concerning his enrollment in school and his availability for employment. The pertinent portion of the questionnaire is as follows:

Q: Does your schooling affect your ability to look for or accept a job?

A: Yes.

Q: If yes, explain:

A: Sometimes my school schedule conflicts with the schedule of the job I am seeking.

Q: Are you willing to quit, rearrange, or get excused from classes, in order to accept a suitable job?

A: Yes.

Q: If yes, what specifically can you do with your classes if they conflict with a job, and what days and hours are you willing to work?

A: *I am not will[ing] to quit but I am will[ing] to rearrange my class schedule by switching classes to more convenient time whenever possible. I can work on Wednesdays and weekends. I can also work up to early mornings or late evenings Monday through Fridays.*

(Emphasis added.)

At the evidentiary hearing, Padmore was asked, “would you quit school if you had to?” He began his answer by saying, “Yes,” but the remainder of his answer reveals that he, in effect, was not willing to quit school to accept full-time employment:

I would. I have done it before. I did, *I quit a class* last semester so that . . . I could be employed with the Independent School District. I have . . . done that before. *I have quit a class, not school entirely, but I have had to quit a class [to] accommodate my job. I have had to do that and I am willing to do that.*

(Emphasis added.)

These excerpts from the evidentiary record show that Padmore did not state unequivocally that he was willing to quit school completely in order to accept suitable full-time employment. Instead, he stated twice that he was willing to quit only a single class or rearrange his class schedule. The applicable statute requires more; it requires that he “be willing to *discontinue classes* to accept suitable employment,” Minn. Stat. § 268.085, subd. 15(b) (emphasis added), which means all classes.

In response to Padmore’s appellate brief, DEED urged this court to reverse the ULJ’s decision on the ground that the ULJ failed to determine whether Padmore’s testimony was credible and to remand the matter to the ULJ to allow for a credibility determination. This court must review the ULJ’s findings and decision on appeal. Minn. Stat. § 268.105, subd. 7(a), (d) (2010). We do not agree with DEED that the ULJ erred by not making a credibility determination concerning Padmore’s testimony. A ULJ must make an express credibility determination only if “the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a

decision.” Minn. Stat. § 268.105, subd. 1(c) (2010). That standard is not satisfied here. Padmore repeatedly stated that he was willing to quit an individual class or rearrange his class schedule, but he did not state that he was willing to quit school entirely. The ULJ was permitted to take that testimony at face value and to find Padmore ineligible. Thus, it was unnecessary for the ULJ to make a credibility determination to justify his findings.

In sum, the ULJ did not err by determining that Padmore was not available for suitable employment because he was not willing to quit school to accept suitable employment. Because Padmore was not available for suitable employment, he is ineligible for unemployment benefits.

**Affirmed.**