STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1721

Sergey Biblenko,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

Filed October 7, 2008
Reversed
Toussaint, Chief Judge

Department of Employment and Economic Development
File Nos. 8124 07, 8125 07

Peter B. Knapp, Mark D. Olshansky, William Mitchell Law Clinic, 875 Summit Avenue, St. Paul, MN 55105 (for relator)

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Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

TOUSSAINT, Chief Judge

By writ of certiorari, relator Sergey Biblenko challenges the decisions by an unemployment-law judge (ULJ) that he is ineligible for, and has been overpaid, unemployment benefits because he was not willing to stop attending business school in order to accept an offer of suitable employment. Because there is no evidence that relator placed any limitations on his availability for employment or that he had to stop attending business school in order to accommodate suitable employment, we conclude that the ULJ erred and we reverse.

D E C I S I O N

On certiorari review, this court will not disturb the ULJ's decision unless it was based on unlawful procedure, legal error, or insubstantial evidence in view of the entire record, or unless it was arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006). We "view the ULJ's factual findings in the light most favorable to the decision." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But this court will exercise its independent judgment when reviewing questions of law. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

The public purpose of Minnesota's unemployment insurance program is to assist involuntarily unemployed workers in becoming reemployed through temporary partial wage replacement. Minn. Stat. § 268.03, subd. 1 (2006). Statutes describing eligibility for this program are "remedial in nature and must be liberally construed to effectuate the public policy set out in Minn. Stat. § 268.03." *Jenkins*, 721 N.W.2d at 289 (citation

omitted).

An applicant is eligible for unemployment benefits if, among other conditions, he or she "was available for suitable employment." Minn. Stat. § 268.085, subd. 1(4) (2006). Being "available" means that the applicant "is ready and willing to accept suitable employment" and has a genuine attachment to the work force. *Id*., subd. 15(a) (2006). No self-imposed restrictions or restrictions created by circumstances may prevent an applicant from accepting suitable employment. *Id*. Thus, an applicant is not considered available for suitable employment if he or she "has restrictions on the hours of the day or days of the week that the applicant can or will work, that are not normal for the applicant's usual occupation or other suitable employment." *Id*., subd. 15(d) (2006). In addition, an applicant who is "a student must be willing to quit school to accept suitable employment." *Id*., subd. 15(b) (2006).

Here, relator was a student attending morning classes at the Minnesota School of Business, and was employed as a second-shift assembler during the afternoon and evening. Upon being laid off from his employment, relator established an unemployment benefits account and received payments for several weeks. During this period, relator switched to an evening-class schedule because he thought it would be easier to find a job during the day, and he applied for both first- and second-shift jobs.

Respondent Department of Employment and Economic Development (DEED) issued relator a student-eligibility questionnaire, in which he was asked whether his schooling affected his ability to seek or accept a full-time job. He answered no. Relator was also asked whether he was "willing to quit school if [he was] offered a suitable full-

time job that interferes or conflicts with [his] school schedule." Relator again answered no. Relator was deemed ineligible for benefits based on this answer, and he appealed.

At the hearing before the ULJ, relator explained that because the same teacher taught both morning and evening classes, he could easily change his class schedule to accommodate either first- or second-shift employment, and that he would have accepted any job as long as the pay was appropriate. Relator further testified that he actively and diligently looked for work and that he did not refuse any offer of suitable employment. His testimony was undisputed.

While the ULJ found that relator "is able to switch his classes from morning to evening or evening to morning if he needs to do so, in order to accept an offer of suitable employment," the ULJ nonetheless concluded that relator "is not willing to quit school in order to accept an offer of suitable employment." We find that the ULJ's analysis begs the question: If relator's flexible class schedule does not prevent him from accepting any offer of suitable employment, why must he be willing to quit school in order to be considered available, and therefore eligible, for unemployment benefits? Such a rigid application of section 268.085, subdivision 15(b), is unwarranted on these facts.

Neither this record nor the ULJ's findings contain evidence that relator's attachment to the work force was less than genuine or that he restricted his availability for suitable employment. Denying relator unemployment benefits merely because he did not have to, and was therefore unwilling to, quit school would not serve the overarching public policy of the unemployment insurance program, which is to provide temporary partial wage reimbursement to involuntarily unemployed workers who are genuinely

attached to the work force.

In *Hansen v. Cont'l Can Co.*, the supreme court reversed a ruling that the student-relator was ineligible for unemployment benefits because he was not available for work under a prior version of section § 268.085, subdivision 15, that did not include the requirement that student-applicants be willing to quit school. 301 Minn. 185, 186, 221 N.W.2d 670, 671 (1974).[1] The supreme court stated: "Attending college does not by definition make a claimant unavailable for work." *Id*. at 187, 221 N.W.2d at 672. "A claimant may further his education while unemployed and still receive benefits so long as he meets the statutory requirements for eligibility and the tests for availability." *Id*. at 188, 221 N.W.2d at 672. Noting that relator had "offered to quit school *or switch shifts in order to secure employment*," the supreme court determined that relator had "placed no conditions or restraints on his availability." *Id*. (emphasis added). The relator in *Hansen* was deemed available for work because "[a]t no time did he limit his accessibility or reject employment," and "[n]o evidence was presented to show a lack of interest in work or an unwillingness to work." *Id*.

The supreme court later emphasized the factual inquiry that must occur in such cases in *Goodman v. Minn. Dep't of Employment Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977). There, the supreme court instructed DEED decisionmakers to determine whether a student-applicant is "in fact actively seeking work" and is "in fact

[1] The relator in *Hansen* attended college in the mornings and worked second-shift until he was involuntarily laid off. 301 Minn. at 186-87, 221 N.W.2d at 671. He claimed unemployment benefits but was deemed ineligible on the basis that, because his class schedule "restricted the terms and conditions under which he would accept employment," he was not attached to the work force. *Id*. at 187, 221 N.W.2d at 671.

willing to quit college if offered suitable employment that would conflict with his college schedule." *Id*. While we acknowledge that this directive is usually indicative of a student-applicant's attachment to the work force, we also note that the unique facts of each case should not be ignored through blunt application of the eligibility statute. According to *Goodman*, as well as under section 268.085, subdivision 15(a), the primary issue to be determined on the facts of each case "is whether the [student-applicant's] attachment to the work force is genuine." *Id*.

In light of the factual inquiry directed by *Goodman*, and like the relator in *Hansen*, we find no evidence here that relator lacked interest or willingness to work, placed any restrictions on the hours or days that he was willing to work, or rejected suitable employment with appropriate pay. There is no question on this record that relator could accommodate any suitable employment offered him because of his flexible class schedule and that he was genuinely attached to the work force. Thus, we conclude that relator was available for suitable employment and is eligible for, and was not overpaid, unemployment benefits.

Reversed.