

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1459**

In the Matter of: Richard A. Miezwa.

**Filed August 15, 2022
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 46819697-3

Richard A. Miezwa, Pine City, Minnesota (pro se relator)

Anne Froelich, Minnesota Department of Employment and Economic Development,
St. Paul, Minnesota (for respondent department)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Kirk,
Judge.*

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he was ineligible for unemployment benefits. Because the record supports the ULJ's finding that relator was not available for suitable employment during the approximately six-week period at issue, we affirm.

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

FACTS

Relator Richard A. Miezwa is a union plumber. In June 2021, he underwent surgery to repair a hernia. His doctor imposed a 15-pound lifting restriction until July 6. Miezwa was unable to perform his usual work activities with this restriction. He did not seek other employment and applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) denied his request, and Miezwa appealed. Following an evidentiary hearing and reconsideration process, the ULJ determined that Miezwa was ineligible for benefits because he was not available for suitable employment during the relevant time period. Miezwa appeals by writ of certiorari.

DECISION

To be eligible for unemployment benefits, a person must be “available for” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4), (5) (2020). A person is “available for suitable employment” if the person “is ready, willing, and able to accept suitable employment.” *Id.*, subd. 15(a) (2020). “Suitable employment” is defined as “employment in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2020). “In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant’s customary occupation, and the distance of the employment from the applicant’s residence is considered.” *Id.*

Whether an applicant is available for suitable employment is a question of fact. *See Semanko v. Dep’t of Emp. Serv.*, 244 N.W.2d 663, 665 (Minn. 1976) (stating that “question

of availability for work must be determined anew on the facts of each case”). We review a ULJ’s findings of fact in the light most favorable to the ULJ’s decision and “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008).

This appeal turns only on the ULJ’s factual finding that Miezwa was not available for suitable employment.¹ Miezwa asserts that he was. The ULJ did not make an express finding as to what constitutes “suitable employment” for Miezwa. But the ULJ implicitly treated plumbing work as his suitable employment, finding that he is a full-time plumber, had worked for his current employer for 21 years, and “was a union member in good standing and used a union hiring hall to secure union plumbing employment.” The ULJ also found that Miezwa was not able to return to this work while his medical restriction was in place because plumbing requires him to “lift[] more than 15 pounds through the workday.” And the ULJ found it was “unlikely [that] Miezwa could have performed other jobs or occupations other than plumbing while he was recovering from his injury and surgery” and under the 15-pound lifting restriction. The record substantially sustains these findings.

First, the record supports the ULJ’s implicit finding that Miezwa’s “suitable employment” is plumbing work. Miezwa testified that he had worked for his current

¹ The ULJ also found that Miezwa was actively seeking employment. DEED challenges this finding, but we need not decide the issue because the record supports the ULJ’s finding that Miezwa was not available for suitable employment.

plumbing employer for 21 years and is a member in good standing of his local plumber's union. He anticipated and did return to his prior position after the weight restriction was lifted. Nothing in the record indicates Miezwa was qualified for other kinds of work.

Second, the record supports the ULJ's findings that Miezwa could not perform his suitable employment—plumbing work—within the 15-pound lifting restriction. Miezwa candidly acknowledged that plumbing is “heavy work” and there were no plumbing jobs that he could perform within his lifting restriction. His long-time employer confirmed this, stating in a letter that there was no work available to Miezwa within his restriction.

Because substantial evidence supports the ULJ's factual determination that Miezwa was not available for suitable employment from May 29 to July 6, 2021, Miezwa was not eligible for unemployment benefits during that time.

Affirmed.