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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1454**

Kristan Castrovinci,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 23, 2011
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 25004306-3

Kristan Castrovinci, Palm Coast, Florida (pro se relator)

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

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Huspeni, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

Kristan Castrovinci contests an unemployment law judge's decision ordering him to repay \$1,951 in unemployment benefits because he was not available for or actively

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

seeking employment while attending college in Florida. The record shows that Castrovinci made himself available to work only on nonschool days, was unwilling to subordinate his school attendance to employment, restricted his job search to too narrow a geographic area, and actively applied for only two jobs in nearly four months since he started school. We affirm.

FACTS

Kristan Castrovinci moved from Minnesota to Florida in September 2009 and started working for the restaurant “High Jackers.” He also enrolled in classes four days per week at Daytona State University to begin in January 2010. By March 2010, he was fired from High Jackers. He explained why to the Minnesota Department of Employment and Economic Development (DEED):

On 3-14-10 I got a voice mail stating that I was to be discharged because they are looking for someone to work more then [sic] one day a week. I go to college 4 days a week. Roughly 2 months ago the head manager Lisa wanted me to work more then [sic] one day a week. I told her that would be fine, just don't give me shifts that conflict with college. The next couple of weeks I was at 2 or 3 days a week but not long until I was put back at one day a week by High Jacker's decision. . . . I was always will [sic] to work more then [sic] one day a week, I just could not work on the times I was in class.

In Castrovinci's application for unemployment benefits, he said he could work “[a]ll [days] except class days.”

DEED declared that Castrovinci was ineligible for unemployment benefits because he was not available for or actively seeking employment. Castrovinci appealed. An unemployment law judge (ULJ) reached the same conclusion and ordered him to

repay \$1,951 in overpaid benefits. Castrovinci moved for reconsideration and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

Castrovinci challenges the ULJ's decision that he is ineligible for unemployment benefits. Neither party discusses whether Castrovinci's move to Florida, his employment in Florida, and his discharge in Florida bears on the expenditure of Minnesota benefits, so neither do we. We may reverse or modify a ULJ's decision if the ULJ's findings, conclusion, or decision are affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2008). To be eligible for unemployment benefits, a benefit-seeker must be "available for" and "actively seeking" suitable employment as defined by statute. *See* Minn. Stat. § 268.085, subd. 1 (4), (5) (Supp. 2009). Castrovinci specifically contests the ULJ's determination that he was not available for and actively seeking employment. A ULJ determination regarding whether a person is actively seeking and available for suitable employment is a factual one. *McNeilly v. Dep't of Employment & Econ. Dev.*, 778 N.W.2d 707, 711 (Minn. App. 2010). We sustain ULJ fact findings if they are supported by substantial evidence. *Id.* "Substantial evidence" is relevant evidence that a reasonable person could deem adequate to support a conclusion. *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

We first address the ULJ's finding that Castrovinci was not available for suitable employment. Available for employment means the person is "ready and willing to accept suitable employment" and excludes situations in which he imposes certain restrictions

preventing him from accepting employment. Minn. Stat. § 268.085, subd. 15 (Supp. 2009).

One reason the ULJ found that Castrovinci was unavailable for work was Castrovinci's preference for school over employment. This ordering of priorities is not necessarily unreasonable, but it conflicts with 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.

Id. Castrovinci testified that he would be willing to quit school or change his school schedule if he was offered a warehouse job. But this testimony differed from his earlier statement to the department. The ULJ asked him to explain the apparent inconsistency. Castrovinci responded that he "never would have made that [earlier] statement if [he] would have known it was gonna cost [him] this amount [of] money and this big of a headache." As between Castrovinci's conflicting hearing and written statements, the ULJ found the written ones more credible. We generally defer to the ULJ's resolution of credibility questions. *McNeilly*, 778 N.W.2d at 710. But the deference is not necessary here. Castrovinci's statements are consistent based on his own explanation: at the time he made his decision to limit his work availability, he gave the highest priority to school over employment; but when he later realized the impact his priorities have on his ability to receive public unemployment funds, he changed his priorities in favor of employment over school. But our focus is on his priority-based unavailability at the time he limited his

hours and lost his job, not on his enlightened priority adjustment after he realized the consequences of his priorities.

The other reason the ULJ found that Castrovinci was unavailable to work was his transportation restrictions. Benefits-limiting restrictions include those that are “either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.” Minn. Stat. § 268.085, subd. 15. When asked how far he was willing to travel to work, Castrovinci first claimed he was willing to travel anywhere in the country, then he limited it to 100 miles, then he admitted he could travel only 10–20 miles because of his car. The ULJ reasonably found most credible his 10–20 miles statement and properly concluded that this was a self-imposed limitation to his availability.

We also address the ULJ’s finding that Castrovinci was not actively seeking suitable employment. The active seeking of suitable employment includes only “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.” Minn. Stat. § 268.085, subd. 16 (2008). Reading newspaper and journal advertisements, conducting a one-time job-data-bank search, and applying for two or three jobs in two months is not actively seeking employment. *Monson v. Minn. Dep’t of Employment Servs.*, 262 N.W.2d 171, 172 (Minn. 1978). By contrast, making multiple telephonic and in-person contacts during an 11-week period with five prospective employers, including two reaching a network of over 100 publications, formally interviewing with one employer, and providing reasonable explanations for not pursuing

other steps, constitutes 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 in Mueller v. Comm’r of Econ. Sec.*, 633 N.W.2d 91, 93 (Minn. App. 2001).

Castrovinci did not actively seek employment. He told the ULJ that he sought employment by listing his resume with two employment services and looking in a weekly advertiser for warehouse jobs. Asked if he had actually applied for any jobs, he claimed that before starting school he electronically submitted “hundreds” of resumes to warehouses around Palm Coast and Daytona. But when asked if he has a record of these applications, he claimed that he “clean[s] out [his] AOL” and lost all the evidence. He acknowledged that he did not interview for any warehouse jobs and that after starting school the only places he applied to were two restaurants. After assessing credibility, the ULJ found that since he started school, Castrovinci submitted no applications and contacted no employers in person or by telephone until one week before the hearing. And of the two restaurant jobs he did apply for, he was qualified for only one. The ULJ’s finding that Castrovinci did not actively seek employment is substantially supported.

Affirmed.