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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1900**

Jason Rosauer,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 13, 2012
Affirmed in part and vacated in part
Worke, Judge**

Department of Employment and Economic Development
File No. 28324257-3

Jason R. Rosauer, Brooklyn Park, Minnesota (pro se relator)

Lee B. Nelson, Megan A. Flynn, Department of Employment and Economic
Development, St. Paul, Minnesota (for department)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

In this certiorari appeal, relator seeks review of an August 16, 2011
unemployment-law judge (ULJ) decision determining relator to be ineligible for
unemployment benefits because he was unavailable for suitable employment. Because
the record includes substantial evidence to support the ULJ's decision that relator was

ineligible for the period March 10, 2011 to August 9, 2011, we affirm. We vacate the portion of the ULJ decision that reopens its eligibility decision for the period of January 23, 2011 to March 9, 2011, because the ULJ lacked jurisdiction to reopen that decision once it became final.

FACTS

Relator Jason Rosauer was employed by Target Corporation as an investigation specialist from November 2008 until his discharge in January 2011. Soon after his discharge, relator began training to become a police officer and was accepted into the Police Officers Standards and Training (POST) program at Hennepin Technical College. First semester classes were held from January 26, 2011 to May 12, 2011; relator attended POST classes Monday through Friday from five p.m. to eight p.m.

Following a hearing on March 9, 2011, an unemployment law judge (ULJ) determined that relator was not eligible to receive benefits, although he had received benefits from January 23, 2011 to March 3, 2011, based on an initial determination of eligibility. The March 10, 2011 ULJ decision states that when relator applied for benefits, he answered “no” to the question of whether he would “quit, rearrange, or get excused from classes” in order to accept suitable employment. The ULJ concluded that relator’s unreasonable restriction of his job search resulted in his failure to satisfy the statutory requirement to make “reasonable diligent efforts to obtain suitable employment.” Although the ULJ determined that relator was ineligible during this period, the ULJ decision also states that relator was not overpaid benefits for that period.

No request for reconsideration was filed and the ULJ's March 10, 2011 decision became final.

Thereafter, DEED mistakenly continued to award relator benefits from March 10, 2011, until July 26, 2011. The ULJ had jurisdiction to determine whether relator was eligible to receive benefits for the period March 10, 2011 to August 9, 2011, as the commissioner had the right to raise an issue of relator's ineligibility to receive benefits "at any time within 24 months from the establishment of a benefits account." Minn. Stat. § 268.101, subd. 2(e) (2010). On July 26, DEED issued a determination notifying relator that he was not eligible for benefits and that he had been overpaid in the amount of \$5,856 beginning on March 10, 2011. Relator challenged that determination, and the ULJ held a second hearing on that appeal on August 9, 2011.

At the second hearing, relator clarified that he was confused when responding to the DEED eligibility questionnaire and ULJ questions during the first hearing. Relator testified that he was willing to reschedule classes or quit school to accept suitable employment, and that he was looking for employment in a variety of areas. Although relator offered much of the same testimony as he did at the hearing on his earlier appeal, the second appeal addressed his eligibility for the period from March 10 to the date of the second hearing. The ULJ rejected relator's testimony, ruling that relator's "overall testimony [was] not believable." The ULJ also found that relator's "belief he would have been permitted to arrive late to class every evening was speculative and not credible," and his explanation about limiting his job search was "contrived."

In the August 16 decision, the ULJ reinstated the March 10 decision for the given reason that relator “may not [have] realize[d] the need to file a request for reconsideration” from the March 10 decision because he “was receiving employment benefits.” The ULJ specifically permitted relator to pursue his appeal rights to the March 10 decision but limited the scope of the August 16 decision to relator’s eligibility for the period of March 10, 2011 to August 9, 2011, the date of the second ULJ hearing. Thereafter, upon relator’s request for reconsideration, the ULJ affirmed its decision, and relator appealed to this court by writ of certiorari.

DECISION

When reviewing a ULJ decision, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator were prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). This court reviews de novo a ULJ’s determination that an applicant is ineligible for unemployment benefits. *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). This court also reviews factual findings in the light most favorable to the ULJ decision. *Skarhus v. Davanni’s*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court must defer to a ULJ’s credibility determinations. *See McNeilly v. Dept. of Empl. & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010) (“This court . . . gives deference to the

credibility determinations made by the ULJ”); *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.”).

Two of the conditions of eligibility to receive unemployment benefits are that an applicant must be “available for suitable employment” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4), (5) (2010). “Available for suitable employment” is defined to prohibit the applicant from placing “self-imposed” restrictions on suitable employment. Minn. Stat. § 268.085, subd. 15(a) (2010). Further, “actively seeking suitable employment” requires the applicant to make “reasonable, diligent efforts an individual in similar circumstances would make” and prohibits the applicant from “[l]imiting the search to positions that are not available or are above the applicant’s training, experience, and qualifications.” Minn. Stat. § 268.085, subd. 16 (a) (2010). For a student, “actively seeking suitable employment” requires the student to be willing to discontinue regularly scheduled classes in order to accept employment. Minn. Stat. § 268.085, subd. 15(b) (2010). Further, if there are no jobs within “the applicant’s usual or customary occupation, . . . the applicant must actively seek other suitable employment.” Minn. Stat. § 268.085, subd. 16(c) (2010).

The ULJ ruled that relator did not satisfy either condition to be eligible to receive benefits. The record includes evidence that relator was unavailable for suitable employment because he was attending classes and unwilling to quit if he obtained suitable employment. Relator attempted to challenge the ULJ’s factual finding on this point, claiming that he was confused by the original questions posed to him in a DEED

eligibility questionnaire for benefits and by questions asked by the ULJ during the first hearing. The ULJ listed the changes in relator's statements about whether his class schedule could be rearranged, whether he could arrive late to classes because of a job, and whether he would have quit school to obtain a job, and the ULJ's conclusion that relator's shifting statements adversely affected his credibility finds substantial support in the record. See *Bangtson*, 766 N.W.2d at 332.

The ULJ also found appellant's active efforts to obtain suitable employment insufficient to satisfy the unemployment statute. The August 16, 2011 ULJ decision states that relator claimed to seek employment in other fields, but relator submitted a list of jobs he had applied for, some of which "were not hiring at the time," some of which were limited to "utilizing his sales background," and none of which "related to his financial advisor experience or his communications degree." The ULJ also noted that relator gave a "contrived explanation why he previously testified he limited his job search to CSO [community service officer] positions." The ULJ concluded that relator's "overall testimony is not believable." Given the ULJ's discretion to make credibility determinations, we decline to disturb the ULJ's decision that relator was not eligible to receive unemployment benefits from the period March 10, 2011 to August 9, 2011. See *McNeilly*, 778 N.W.2d at 710; *Bangtson*, 766 N.W.2d at 332.

Finally, the ULJ "reinstated" the March 10 decision to permit relator to pursue his appeal rights to request reconsideration to the March 10 decision but limited the scope of the August 16 decision to the period of March 10, 2011 to August 9, 2011. A ULJ "decision is final unless a request for reconsideration is filed." Minn. Stat. § 268.105,

subd. 1(c) (2010); *see* Minn. Stat. § 268.105, subd. 2(a) (2010) (stating that unemployment benefits applicant must file a request for reconsideration of a ULJ decision within 20 days of the “sending” of the decision). Once a ULJ decision becomes final and there has been no timely appeal, the ULJ lacks jurisdiction to take further action in the case. *Rowe v. Dept. of Empl. & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005). Under these circumstances, we conclude that the ULJ lacked jurisdiction to “reinstate” the March 10 decision to reconsider relator’s eligibility to receive benefits, as relator did not make a timely request for reconsideration of the March 10 decision. We therefore vacate the portion of the August 16, 2011 ULJ decision that reinstates the March 10 decision.

Affirmed in part and vacated in part.