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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-53**

Osman Ali,  
Relator,

vs.

Minneapolis Special School District #001,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 12, 2011  
Affirmed  
Wright, Judge**

Minnesota Department of Employment and Economic Development  
File No. 26150334-3

William L. Libby, St. Louis Park, Minnesota (for relator)

Minneapolis Special School District #001, c/o TALX UCM Services, St. Louis, Missouri  
(respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,  
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Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Stauber,  
Judge.

## UNPUBLISHED OPINION

**WRIGHT**, Judge

Relator challenges a decision by the unemployment law judge (ULJ) that he is ineligible to receive unemployment benefits because he was not available for or actively seeking suitable employment. We affirm.

### FACTS

Relator Osman Ali was employed as a teacher for Minneapolis Special School District #001 from January 1997 to August 2010. Ali did not have a permanent teaching license. But for several years, he had obtained a limited license that permitted him to teach on a temporary basis. Because he was unable to obtain a limited license for the 2010-2011 school year, the school district placed him on a one-year involuntary administrative leave of absence on August 26, 2010.

Ali was enrolled in a teaching licensure program at Metropolitan State University and, in fall 2010, he enrolled in the final two courses necessary for him to obtain permanent licensure. He was scheduled to complete the requirements for his degree in December 2010, perform one month of student teaching, and complete testing to obtain his teaching license shortly thereafter.

Meanwhile, Ali established an unemployment-benefits account with the Minnesota Department of Employment and Economic Development (DEED). As part of his application, Ali completed a form to determine his eligibility for unemployment benefits. On the form he indicated that he attends school on Monday and Friday evenings, and he answered “yes” in response to the question whether his educational

pursuits affect his ability to seek or accept a job. He explained that “this education program will lead me [to] obtain a Minnesota teacher license which I need.” Ali answered “yes” to the question of whether he was seeking work and explained that he was applying for “[t]eaching” work. In response to the question whether he was willing to quit his classes if offered a suitable job that interferes with his class schedule, Ali answered “no” and explained that he “need[s] [his] classes for [his] long term employment.”

A DEED adjudicator determined that Ali is ineligible to receive unemployment benefits because he was seeking only teaching positions even though he did not have a teaching license and he was not conducting an active search for work. Ali appealed the determination, and a ULJ conducted a telephonic hearing on October 19, 2010. Ali testified that he was pursuing both full-time and part-time positions in education and accounting by searching on the Internet and making personal inquiries. He testified that he had applied for one position after he was placed on administrative leave in August, but he had not found other positions to apply for in the fields in which he sought employment. Ali testified that, if he were offered a full-time position, he would discontinue his classes in order to accept the position.

The ULJ found that Ali was not available for and actively seeking employment. Therefore, he is ineligible to receive unemployment benefits. Ali sought reconsideration, and the ULJ affirmed her decision. This certiorari appeal followed.

## DECISION

Ali challenges the ULJ's determination that he was not available for and actively seeking employment. When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the decision is "(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).

Whether a party is entitled to receive unemployment benefits presents a question of law, which we review de novo. *See Bukkuri v. Dep't of Emp't & Econ. Dev.*, 729 N.W.2d 20, 21-22 (Minn. App. 2007) (reviewing unemployment statute de novo). Whether a party is "actively seeking" and "available for" suitable employment as required for eligibility is a factual determination. *Goodman v. Minn. Dep't of Emp't Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977). We will sustain a ULJ's factual findings if they are supported by substantial evidence. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion . . . ." *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted).

To be eligible for unemployment benefits, an applicant must be "available for" and "actively seeking" suitable employment. Minn. Stat. § 268.085, subd. 1(4)-(5) (2010). "Available for" suitable employment means:

[A]n applicant is ready and willing to accept suitable employment. The attachment to the work force must be genuine. An applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment. . . . [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.*, subd. 15(a), (b) (2010). “Actively seeking” suitable employment means:

[T]hose 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. Limiting the search to positions that are not available or are above the applicant’s training, experience, and qualifications is not “actively seeking suitable employment.” . . . If reasonable prospects of suitable employment in the applicant’s usual or customary occupation do not exist, the applicant must actively seek other suitable employment . . . .

*Id.*, subd. 16(a), (c) (2010). When the applicant is a student, the ULJ must decide whether the applicant is actively seeking work and willing to discontinue classes if offered suitable employment that would conflict with the applicant’s class schedule.

*Goodman*, 312 Minn. at 553, 255 N.W.2d at 223. The ULJ’s inquiry focuses on whether the applicant’s attachment to the work force is genuine. *Id.*

We first address the ULJ’s finding that Ali was not actively seeking employment. The applicant must make reasonable and diligent efforts to procure work, as one genuinely interested in obtaining employment would. Minn. Stat. § 268.085, subd. 16(a).

Limiting the search to positions that are not available or for which the applicant is not qualified is not actively seeking work. *Id.* We have held that an applicant who “asked around for work” without applying to any positions failed to engage in reasonable efforts to obtain employment. *McNeilly*, 778 N.W.2d at 712. An applicant who read employment advertisements, searched a job data bank, and applied for two or three positions in two months was not actively seeking employment. *Monson v. Minn. Dep’t of Emp’t Servs.*, 262 N.W.2d 171, 172 (Minn. 1978). Likewise, an applicant who contacted four employers by telephone and visited a job-service office twice was not actively seeking employment. *James v. Comm’r of Econ. Sec.*, 354 N.W.2d 840, 841-42, 844 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984). By contrast, an applicant who made multiple telephone and in-person networking contacts with five prospective employers during an 11-week period, including two employers representing a large industry network, interviewed with one employer, pursued self-employment, and provided reasonable explanations for not pursuing other opportunities was determined to be 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 by Mueller v. Comm’r of Econ. Sec.*, 633 N.W.2d 91, 93 (Minn. App. 2001).

Here, the ULJ found that “Ali has not made diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment.” The ULJ found that, although Ali looked on the Internet for job openings, “he was not applying for jobs” and he “did not give a good reason for why he has not applied to more jobs, except that he has been working on his resume.” These findings are supported by

the record. Ali testified that, during the six-week period after he was placed on administrative leave, he searched for jobs on the Internet and inquired once in person about a position. But he applied for only one position. When the ULJ asked why he had not applied for more jobs, Ali testified that he had found only one position for which he felt qualified in the fields in which he was looking. He indicated generally that he had looked and will continue to look for work. Because there is substantial evidentiary support for the ULJ's finding that Ali is not actively seeking suitable employment, the ULJ did not err by concluding that Ali is ineligible to receive unemployment benefits.

We next address the ULJ's finding that Ali was not available for suitable employment. "Available for suitable employment" means that the applicant is "ready and willing to accept suitable employment." Minn. Stat. § 268.085, subd. 15(a). A student must be willing to quit school if classes interfere with suitable employment. *Id.*, subd. 15(b).

The ULJ found that Ali's class attendance restricts his ability to accept suitable employment. In doing so, the ULJ considered the contradiction in Ali's written application submissions and his testimony. Ali initially indicated in his application that he was not willing to quit school because he needs to complete his courses to obtain long-term employment. But he subsequently testified that he was willing to discontinue classes in order to accept employment that conflicts with his class schedule.

In her decision on reconsideration, the ULJ did "not find it believable that Ali is willing to quit school when he is scheduled to complete his program by December 2010 and will be able to [secure] his valid teaching license to allow him to return to work for

Minneapolis Special School District #001.” Because credibility determinations are the exclusive province of the ULJ, we accord such determinations deference on appeal. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Accordingly, substantial evidence supports the ULJ’s finding that, because Ali is unwilling to discontinue his classes, Ali is not ready and willing to accept suitable employment.

The ULJ correctly concluded that Ali is ineligible to receive unemployment benefits because he was neither available for nor actively seeking suitable employment.

**Affirmed.**