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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-955**

Tina Somora,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed February 21, 2012
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 27412401-2

Tina Somora, St. Paul, Minnesota (pro se relator)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the unemployment-law judge's (ULJ) decision denying her
unemployment benefits, arguing that she was available for suitable employment.
Because the ULJ's determination that relator is ineligible for unemployment benefits

because she was unwilling to discontinue schooling to accept suitable employment is supported by substantial evidence in the record, we affirm.

FACTS

Relator Tina Somora worked full-time as a teller at Capital Bank from August 2006 to March 2011. She worked 35 hours per week, from 8:30 a.m. to 4:30 p.m., Monday through Friday, and earned \$11.70 per hour. Relator worked primarily as a bank teller in the lobby, which closed at 4:00 p.m. But on occasion she worked in the drive-through, which remained open until 6:00 p.m.

Relator started taking classes in November 2009 at the Minnesota School of Business. She was enrolled part time in an associate's degree program in medical assisting and expected to graduate in December 2011. In the spring quarter, which started April 4, 2011, relator attended classes on Thursdays from 6:00 p.m. to 10:00 p.m. She also took one online class. Relator was required to attend all classes and could not change her class schedule once the quarter began.

After relator lost her job in March 2011, she applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) denied her application because she indicated that she was not willing to quit school to accept suitable employment. Relator appealed. When the ULJ asked relator whether she would quit school to accept suitable employment, she again said that she was not willing to quit school. The ULJ determined that she was ineligible for benefits because she was not willing to quit school for suitable employment and affirmed his decision after relator's request for reconsideration. This certiorari appeal follows.

DECISION

Relator argues that her class schedule did not make her unavailable to accept suitable employment. This court will affirm the ULJ's decision unless the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d)(5) (2010). Whether a party engaged in employment misconduct is a mixed question of fact and law. *State v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Id.* But whether a party is "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).

To be "available for suitable employment" means that "an 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." Minn. Stat. § 268.085, subd. 15(a) (2010). If the applicant is a student who has regularly scheduled classes, she "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(b) (2010).

In the hearing with the ULJ, relator explicitly stated that she was not willing to quit her classes if she found a job that conflicted with her class schedule:

ULJ: [A]re you willing to quit school to accept employment?

RELATOR: No, because I believe that there's always a way to work around things. I've worked and gone to school since I was 15. My education is very important to me, as well as working because I need my finance to support myself. And, I mean, everybody needs education to further and it's important to me. It's never been a problem for me to work or go to school.

The ULJ found that relator met both conditions of the statute. The ULJ explained:

The evidence shows that employment as a bank teller normally does involve hours of work until after 4:30 PM. [Relator], however, is not available for work after 4:30 PM on days that she has class. This is therefore a restriction that is not normal for her usual occupation, or indeed for the work in retail that [relator] has been seeking.

The ULJ also found that relator is unable to change her class schedule because the quarter had already started.

Even though relator's scheduling conflict amounts to only a few hours, one day per week, the legislature was clear that individuals receiving unemployment benefits must be willing to discontinue education to accept suitable employment. *See Shreve v. Dep't of Econ. Sec.*, 283 N.W.2d 506, 508 (Minn. 1979) ("In a world of limited resources, a State may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school."). While relator customarily worked the hours of a bank teller working in the lobby, she must still remain available to work other hours. *See*

Minn. Stat. § 268.085, subd. 15(d) (2010) (“An applicant who 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, is not ‘available for suitable employment.’”); *see also Hansen v. Continental Can Co.*, 301 Minn. 185, 188, 221 N.W.2d 670, 672 (1974) (“We do not hold in any way that a student may refuse daytime employment and collect benefits merely because he customarily worked the night shift.”). Because the statute requires relator to be willing to discontinue her classes to accept suitable employment and she was not willing to do so, the ULJ did not err in determining relator to be ineligible for unemployment benefits.

Affirmed.