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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0019**

Cindy Asare-Davis,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 26, 2013
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 30275275-3

Cindy Asare-Davis, Minneapolis, 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 Peterson, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ) decision that she is not eligible for unemployment benefits, arguing substantial evidence does not support the ULJ's finding that she is unavailable for suitable employment. We affirm.

FACTS

On February 7, 2012, relator Cindy Asare-Davis was discharged from her position at Surgical Technology. She established a benefits account with respondent Minnesota Department of Employment and Economic Development (DEED) on February 19 and began receiving benefits.

Asare-Davis subsequently enrolled in a master's degree program in clinical psychology. As a prerequisite to the program, Asare-Davis took one class that began in May 2012 and lasted seven and one-half weeks. The class met on Wednesdays from 4:00 p.m. to 6:00 p.m. In September, Asare-Davis began taking two classes that met on Thursdays from 4:00 p.m. to 8:00 p.m. In addition to attending classes, Asare-Davis spent eight hours per day looking for employment. She applied for more than 30 positions per week and did not tell potential employers that she was unavailable to work during her class times.

In the fall of 2012, Asare-Davis missed a reemployment-assistance class and told DEED that her absence was due to school. DEED sent her a questionnaire requesting information about her classes. In her response to the questionnaire, Asare-Davis indicated that she was willing to quit or rearrange her classes to accept employment. But

when asked what she would do if a potential job conflicted with her classes, she wrote, “I am willing to rearrange my time but cannot be done until next semester. I will have a talk with my advisor to get another time that will help my job search easier.” Based on her responses, DEED determined that Asare-Davis was not eligible to receive benefits because she was not available for suitable employment.

Asare-Davis appealed, and the ULJ conducted an evidentiary hearing. Asare-Davis testified that she had no limits on when she could work; was willing to reschedule her classes to obtain employment; and, if she could not reschedule her classes, would quit school. She further explained that when she wrote in response to the questionnaire that she could not rearrange her classes until the end of the fall semester, she meant she would only change her schedule if she found employment. The ULJ found Asare-Davis’s testimony that she made a mistake in her written statement not credible. And the ULJ noted that Asare-Davis acknowledged she did not investigate how to reschedule her classes until after she completed the questionnaire. The ULJ concluded that Asare-Davis is ineligible for benefits because she is not available for suitable employment and directed Asare-Davis to repay the benefits she received between May 1 and December 13. Asare-Davis requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

To receive unemployment benefits for a particular week, an applicant must be “available for suitable employment.” Minn. Stat. § 268.085, subd. 1(4) (2012). An applicant is available for suitable employment if he or she is “ready, willing, and able to

accept suitable employment” and does not impose any restrictions that prevent him or her from accepting suitable employment. *Id.*, subd. 15(a) (2012).

[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(b) (2012).

Whether an applicant is available for suitable employment is a question of fact. *Goodman v. Minn. Dep’t of Emp’t Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977). We review factual findings in the light most favorable to the ULJ’s decision and will not disturb them if they are substantially supported by the evidence. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). And we defer to the ULJ’s determinations of witness credibility and conflicting evidence. *Lamah v. Doherty Emp’t Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

Asare-Davis argues that substantial evidence does not support the ULJ’s finding that she is not available for suitable employment. We disagree. The ULJ found that Asare-Davis is not willing to rearrange her class schedule to accept employment. Substantial evidence supports this finding. Beginning in May 2012, Asare-Davis took a seven and one-half week class that met once a week from 4:00 p.m. to 6:00 p.m. And at the time of the hearing, Asare-Davis was taking classes once a week from 4:00 p.m. to 8:00 p.m. Although she testified that the school offered the same classes at different

times, her response to the questionnaire clearly stated that if a potential job conflicted with her classes she was only willing and able to rearrange her classes to accommodate work after the fall semester.

The ULJ rejected Asare-Davis's testimony to the contrary. The ULJ explained her reasons for discrediting Asare-Davis's testimony. First, the ULJ found it was not credible that Asare-Davis made a mistake when she wrote that she could not change her class schedule until the next semester. Second, the ULJ noted Asare-Davis's testimony that she did not explore the options for rearranging her classes until after she completed DEED's questionnaire. Because the ULJ stated the reasons for discrediting Asare-Davis's testimony and substantial evidence supports them, we defer to the ULJ's credibility determinations.

Asare-Davis also contends that she was available for suitable employment between June 27 and September 6 when she was not attending classes. We are not persuaded. Asare-Davis testified that she is a full-time student in a two-year master's degree program. Although she did not have classes in July and August, she intended to resume her coursework in September. In other words, her ability to accept a position in July and August was limited by the restrictions that would commence when she returned to school in September. Accordingly, she was not available for suitable employment even during her two-month summer recess.¹

¹ Asare-Davis contends that the ULJ erred by requiring her to repay benefits that she received through December 13 because she did not receive benefits after October 11. This argument is not availing. The ULJ determined that Asare-Davis is not eligible to receive benefits from May 1 to December 13 and that she must repay any benefits she

In sum, substantial evidence supports the ULJ's determination that Asare-Davis is unwilling to rearrange her class schedule to make herself available for suitable employment. *Cf. Hansen v. Cont'l Can Co.*, 301 Minn. 185, 188, 221 N.W.2d 670, 672 (1974) (determining student was available for suitable employment when he placed no conditions on his availability and offered to quit school to secure employment). Accordingly, we affirm the ULJ's determination that Asare-Davis is not eligible for unemployment benefits.²

Affirmed.

received during the period. Because Asare-Davis did not receive benefits after October 11, she has no benefits to repay for that period.

² Asare-Davis asserts that the transcript contains several errors. Although the transcript omits some words that were "unintelligible," Asare-Davis does not argue that these omissions were material. Moreover, she does not assert that the alleged errors prejudiced her or affected her substantial rights.