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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0020**

Julie A. Vanguilder,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed September 9, 2013  
Affirmed in part, reversed in part, and remanded  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 30166320-3

Julie A. Vanguilder, Poplar, Wisconsin (pro se relator)

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

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and  
Hooten, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

In a certiorari appeal from a determination that relator is ineligible for  
unemployment benefits because she applied for social-security-disability-insurance  
(SSDI) benefits, relator argues that her case should be remanded to the unemployment-  
law judge (ULJ) to consider a letter from her physician stating his knowledge of her

SSDI request. We affirm in part and reverse in part the determination of ineligibility, and remand for determination of when relator's physician became aware of the basis for her SSDI claim.

## **FACTS**

Relator Julie A. Vanguilder was employed by Essentia Health in Duluth from March 2006 to March 2012. Relator worked as an accounting representative, performing various bookkeeping and office duties. Relator suffered from various medical problems, and in November 2011 she needed to undergo hip surgery. As a result of her surgery, relator was unable to work a full 40 hour week, and she subsequently ran out of medical leave. Thereafter, relator was terminated from employment.

Relator applied for and began receiving unemployment benefits on March 4, 2012. On March 26, 2012, relator submitted a letter from her surgeon to the Minnesota Department of Employment and Economic Development (DEED), stating that she was able to work, provided she perform only sedentary work for no more than six hours per day. During the first week of July, relator applied for SSDI benefits. Relator was told that it could take up to six months to receive approval for SSDI benefits, so relator continued her job search, spending approximately 20 to 30 hours per week applying for jobs.

On September 13, 2012, DEED determined that relator was ineligible for unemployment benefits because she "failed to provide a medical statement from her medical professional[] who is aware of the basis for the [SSDI] claim, stating the applicant is able to work or able to work with restrictions." Relator was also deemed

ineligible because she “also failed to provide evidence of suitable work search efforts.” Relator appealed the determination, and a de novo hearing was held by telephone before a ULJ. Following the hearing, the ULJ affirmed the determination of ineligibility on the basis of her SSDI claim. The ULJ found that relator had provided a letter from her physician stating that she is available for suitable employment with restrictions; however, the ULJ also found that her physician was not aware of her SSDI claim or the basis of her claim as required by law. The ULJ also found that relator had demonstrated reasonable, diligent efforts at obtaining suitable employment, and was not ineligible for benefits on that basis.

Relator requested reconsideration of the ULJ’s determination, and submitted an additional letter from her primary care physician. The letter states: “This letter is to ma[ke] you aware, that I have been the primary medical doctor for [relator] since August 2001. I am also aware, and supportive of, the fact she is apply[ing] for Social Security Disability.” The ULJ affirmed the determination of ineligibility, concluding that this letter “would not likely change the outcome of the decision” because “[t]he doctor does not state that he is aware of the basis of [relator’s] Social Security Disability claim and he does not certify that she is available for suitable employment.” This certiorari appeal followed.

## **D E C I S I O N**

On a certiorari appeal, this court may reverse, remand, or modify a decision of a ULJ “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusions, or decision are . . . unsupported by substantial evidence

in view of the entire record.” Minn. Stat. § 268.105, subd. 7(d)(5) (2012). “Substantial evidence is ‘(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.’” *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quoting *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002)).

“This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1 2008). “A reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). Questions of law are reviewed de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

Minnesota law requires that, in order to be eligible for unemployment benefits, an applicant must be available for suitable employment. Minn. Stat. § 268.085, subd. 1(4) (2012). “An applicant who is receiving, has received, or has filed for primary Social Security disability benefits for any week during the benefit year must be determined unavailable for suitable employment for that week.” Minn. Stat. § 268.085, subd. 4(c) (2012). However, an applicant may still be eligible for benefits if “the applicant provides a statement from an appropriate health care professional who is *aware of the applicant’s*

*Social Security disability claim and the basis for that claim*, certifying that the applicant is available for suitable employment.” *Id.*, subd. 4(c)(2) (emphasis added).

Relator argues that she was entitled to a new hearing or to have the record reopened for the ULJ to receive additional evidence from relator’s physician in order to satisfy this exception. Respondent DEED agrees. DEED asserts that relator became ineligible for unemployment benefits when she filed for SSDI benefits in July. DEED further asserts that she remained ineligible for benefits at least until October 11, 2012 when she testified that her doctor was not aware of her SSDI claim, but relator may have since become eligible depending on whether or when her physician became aware of the basis of her SSDI claim, a fact issue for the ULJ to determine. We agree.

Relator testified on October 11, 2012 that she applied for SSDI benefits during the first week of July 2012, and that she did not know whether her primary care doctor, who provided a medical statement asserting her availability for employment, was aware of her SSDI request. Accordingly, we affirm the determination of ineligibility for the period between July 1, 2012 when relator applied for SSDI benefits and October 11, 2012 when relator admitted that her physician was unaware of the basis of her benefits request. *See* Minn. Stat. § 268.085, subd. 4(c)(2). However, the letter relator submitted along with her request for reconsideration indicates that her physician was “aware” of the SSDI request, but does not indicate when he became aware or whether he understood the basis of her claim. Therefore, the ULJ’s finding that relator’s ineligibility was ongoing after the October 2012 hearing is not supported by substantial evidence. Accordingly, we reverse the determination of ineligibility after October 11, 2012 and remand to the ULJ to

determine when relator's physician became aware of the SSDI claim and the basis for the claim.

DEED also argues that the ULJ erred by determining that relator was ineligible for benefits during the period between March 4, 2012 and July 1, 2012. Although relator was initially deemed ineligible for benefits because she was not actively seeking suitable employment and because of her SSDI claim, the ULJ found that relator was making reasonable, diligent efforts at finding suitable employment and was not ineligible on that basis. Because relator did not make her SSDI claim until July 1, 2012 at the earliest, we conclude that relator was eligible for unemployment benefits prior to that date. Therefore, we reverse and modify that part of the ULJ's determination and hold that relator was eligible for unemployment benefits between March 4, 2012 and July 1, 2012.

**Affirmed in part, reversed in part, and remanded.**