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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2382**

Andres Arango,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed January 8, 2008
Affirmed
Huspeni, Judge***

COMMISSIONER
Department of Employment and Economic Development
File No. 13084 06

Andrews Arango, 13674 Flair Court, Apple Valley, MN 55124 (pro se relator)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for
respondent)

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Huspeni,
Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Relator Andres Arango, acting pro se, challenges the decision of the unemployment law judge (ULJ) that he was not eligible for unemployment benefits during a period when he was attending school full-time. Because we agree that relator was not eligible for benefits during that period, we affirm.

FACTS

Relator was a member of the Aircraft Mechanics Fraternal Association (AMFA). After AMFA went on strike against relator's employer in August 2005, relator enrolled in a two-year, full-time program to retrain as a heavy-duty-truck mechanic. He also opened an unemployment benefits account and, for two months, until October 1, 2005, he requested unemployment benefits on a timely basis.

Initially, benefits were denied. But in *Aircraft Mechanics Fraternal Assoc. Members v. Nw. Airlines, Inc.*, Nos. A05-2128, A05-2379 (Minn. App. Sept. 12, 2006), *review denied* (Minn. Oct. 17, 2006), we held that AMFA involvement in a labor dispute did not cause personnel to be ineligible to receive benefits. Relator then received a check for benefits from August 2005 to October 2005, the period during which he had requested benefits.

Relator challenged his failure to receive benefits from October 1, 2005, to August 19, 2006. A Department of Employment and Economic Development (DEED) adjudicator determined that relator was not eligible during that period because he had failed, without good cause, to request benefits after October 1, 2005. Relator challenged

that determination. Following a telephone hearing, the ULJ concluded that relator did have good cause for failing to make timely benefit requests, but was ineligible for benefits because he had not met the statutory weekly eligibility requirements of being able to work, being available for suitable employment, and actively seeking suitable employment. *See* Minn. Stat. § 268.085, subd. 1(4) (Supp. 2005). Relator requested reconsideration, and the ULJ issued an order of affirmance. Relator asks this court to conclude that he was eligible for benefits from October 2, 2005, to August 19, 2006.

DECISION

This court may reverse or modify a ULJ's decision if a petitioner's substantial rights were prejudiced because the ULJ's findings, inferences, conclusions, or decisions are unconstitutional, exceed the department's statutory authority or jurisdiction, are the product of unlawful procedure, are affected by an error of law, are unsupported by substantial evidence in the record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005). We review the findings in the light most favorable to the decision. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). We defer to the ULJ when reviewing credibility and conflicting evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But the ultimate determination of whether a petitioner is disqualified from receipt of unemployment benefits is a question of law, which this court reviews de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

The ULJ found that

[t]he evidence shows that [relator] has been enrolled as a full-time student for over a year and that he is focused on completing his two-year program rather than finding suitable employment. [Relator] has been able to accept employment since October 2005 but he has only accepted employment that fits his school schedule. In addition, [relator's] appeal states that he needs unemployment benefits to get his family through another year of him not working while in school. . . . [Relator's] schooling has restricted his availability for suitable employment.

Substantial evidence supports this finding. When relator appealed from the adjudicator's decision, he stated, "I'm enrolled in a two year program to retrain myself in another field (Heavy Duty Truck Mechanic), and need my [unemployment] benefits to get my family (wife and three young kids) through another year of dad not working."

At the telephone hearing on appeal, relator testified that, two days after his union went on strike and he stopped working, he enrolled in a full-time, two-year program at a technical college to get an AA degree in heavy-duty-truck technology. He testified that he had been attending the program full-time for 14 months, "trying to get [his] AA degree and just move on with [his] life."

Relator testified further that he starting working four hours a day for one employer in October 2005, but after a month he reduced his hours to one hour a day so he could be home with his children while his wife was at work. From this employment, he was earning less than \$50 per week. He also testified that, in October 2005, he started work with a second employer, for whom he worked ten hours per week at first, but that this was gradually reduced to four hours per week. Relator testified that he quit work with this employer in August 2006 because the job was costing him too much in gas money to

commute, and relator “was also starting school so it was kind of time . . . to leave there.” Relator’s testimony about his work history during the period for which he was seeking benefits supports the finding that he was focused on retraining rather than on finding a job.

Relator’s testimony on his work history and effort to retrain himself conflicts with his testimony that he would quit school if a suitable job were offered to him. The ULJ addressed the conflict by finding that “after October 1, 2005, [relator] restricted his availability for employment by attending school.” When reviewing conflicting evidence, this court defers to the ULJ. *Skarhus*, 721 N.W.2d at 344.

While we find relator’s decision to return to school and retrain for other employment commendable, we must agree with the ULJ’s observation that “[u]nemployment benefits are intended to be a temporary wage replacement while individuals find new employment.” We see no basis for overturning the ULJ’s conclusion that relator was ineligible for benefits between October 1, 2005, and August 19, 2006, because he did not meet the weekly eligibility requirements of being able to work, available for suitable employment, and actively seeking employment.

In his brief to this court, relator states that, when he requested the ULJ to reconsider, he sent evidence “in rebuttal” and that he is appealing to this court because the “DEED did not look at the evidence I sent.” The ULJ, in the memorandum accompanying the order of affirmance, found that “[relator] has not offered an explanation for his failure to submit these new comments and documents into the record on October 12, 2006, [at the telephone hearing].” Minn. Stat. § 268.105, subd. 2(c)

(Supp. 2005), provides that, in reconsidering, a ULJ “shall not . . . consider any evidence that was not submitted at the evidentiary hearing” unless (1) the new evidence would likely change the outcome of the decision and there was good cause for not submitting it at the hearing or (2) the new evidence would show that evidence submitted at the hearing was likely false and had an effect on the outcome of the decision. Relator has neither explained why the evidence could not have been submitted at the original hearing nor claimed that any evidence submitted at the hearing was false. The ULJ properly declined to consider the new evidence.

Affirmed.