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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0140**

John R. Deneen, Jr.,
Relator,

vs.

Minneapolis Special School District #001,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 19, 2008
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 13356 06

John R. Deneen, Jr., 1101 Fifth Street, St. Paul Park, MN 55071 (pro se relator)

Minneapolis Special School District #001, C/O TALX UCM Services, Inc., Box 283,
St. Louis, MO 63166 (pro se employer)

Lee B. Nelson, Katrina I. Gulstad, First National Bank Building, Suite E200, 332
Minnesota Street, St. Paul, MN 55101-1351 (for respondent department)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges an unemployment law judge's decision that he was not eligible for unemployment benefits because he was not actively seeking suitable employment.

We affirm.

FACTS

Relator John Deneen, Jr. worked full time as a janitor for Minneapolis Special School District No. 001 beginning in January 2002 and was assigned to Jordan Park Elementary School (Jordan Park). Relator stopped working on July 18, 2006, because the air conditioning at the school was not functioning and the high heat and humidity in the work area exacerbated relator's asthma. He presented a note from his physician stating that he could not work at Jordan Park until the air-conditioning system was fixed. He returned to his position at Jordan Park on October 10, 2006.

While on medical restrictions, relator discussed a transfer to another school with his supervisor, who told him that transfer was against school district policy. Relator did not complete the paperwork that would have allowed for a reasonable accommodation of his medical condition, a procedure the school district representative testified was necessary prior to being transferred for medical reasons. Relator established a benefit account with the Minnesota Department of Employment and Economic Development on August 6, 2006, and sought unemployment benefits through October 9, 2006. A department adjudicator initially determined that relator was eligible for benefits because

he did not have reasonable assurance of employment with educational institutions for the next academic year or term.

The school district appealed the benefits determination, arguing that relator had abandoned his job, and an unemployment law judge (ULJ) held a de novo hearing. During the hearing, the ULJ questioned relator about his efforts to find other suitable employment during the period that he was unable to work at Jordan Park. Relator testified that he looked at want ads, but he did not apply for any other jobs because his primary focus was returning to his job at Jordan Park. Near the end of the hearing, the ULJ noted that his questions to relator about relator's work search went beyond the issue raised by the department's determination of eligibility or respondent's claim that relator abandoned his job. The ULJ asked both relator and respondent if they would have any objections if the ULJ addressed the additional issues in his decision. Both parties stated that they had no objection.

The ULJ found that relator was ineligible for benefits because he was not actively seeking suitable employment during the time that he could not work at Jordan Park. Relator requested reconsideration, and the ULJ issued an order affirming relator's ineligibility based on failure to actively seek employment. This certiorari appeal followed.

D E C I S I O N

In reviewing a certiorari appeal from a ULJ's decision, this court

may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner

may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (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) (2006). Questions of law are reviewed de novo, while findings that are supported by substantial evidence will not be disturbed. *Id.*; *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An applicant for unemployment benefits is “eligible to receive unemployment benefits for any week if . . . the applicant was able to work and was available for suitable employment, and was actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4) (2006). Relator’s own testimony establishes that he was not searching for work while on medical restrictions. Minnesota law defines “actively seeking suitable employment” as making

[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.”

Minn. Stat. § 268.085, subd. 16(a) (2006). At the hearing, relator testified that during his time of work restriction he hoped to return to a job with the school district and that he had neither applied for any jobs nor contacted any employers. But even if relator expected to

return to a job with the school district at some time in the future, he still needed to meet the eligibility requirements for unemployment benefits during each week that he received benefits. One of those requirements is that he actively seek suitable employment. A transfer within the school district due to medical reasons was not possible without appropriate paperwork, which relator did not complete. Relator could not receive unemployment benefits while he simply waited to return to a job with the school district. We conclude that the record supports the ULJ's finding that relator was not actively seeking employment as required by the statute and is therefore disqualified from receiving unemployment benefits.¹

Affirmed.

¹ Relator also argues that he did not abandon his job and that the testimony of employer's witness contained many discrepancies. Because the ULJ based his decision on relator's testimony that he was not actively seeking employment and did not reach the issue of abandonment or the credibility of the school district's witness, we decline to address these issues. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally only consider issues presented to and considered by the district court).