STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1495

Ronald G. Bushard,
Relator,

vs.

Contractors Edge Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 29, 2008
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 6480 07

Ronald G. Bushard, 604 South Franklin Street, New Ulm, MN 56073 (pro se relator)

Contractors Edge Inc., 23378 North Riverfront Drive, Mankato, MN 56001 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Relator Ronald G. Bushard challenges the decision of the unemployment law judge (ULJ) that he is not eligible to receive unemployment benefits because he did not actively seek employment, arguing that: (1) the hearing was unfair because relator did not know that his job search would be at issue at the hearing and did not bring his records with him; and (2) the evidence does not support the ULJ's conclusion that relator was not actively seeking suitable employment. We affirm.

D E C I S I O N

I.

Relator claims that he received an unfair hearing because he was never asked if he kept a written record of his job search. We disagree.

A ULJ conducts an evidentiary hearing "as an evidence gathering inquiry and not an adversarial proceeding." Minn. Stat. § 268.105, subd. 1(b) (2006). The ULJ "shall ensure that all relevant facts are clearly and fully developed." *Id.* A hearing generally is considered fair and evenhanded if both parties are afforded an opportunity to give statements and cross-examine witnesses. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007). The ULJ asked relator if he was comfortable discussing his job search even though the issue was not referenced in the notice of hearing and respondent agreed to address it. Although the ULJ did not specifically ask relator if he had documented his search, relator had ample opportunity to offer that information. Relator also had an opportunity to question the employer's

representative, which he declined. Finally, the ULJ gave relator a chance to make additional comments and ask questions. In sum, we conclude that relator was afforded a fair hearing.

II.

Relator argues that when the job-search records he submitted on reconsideration are taken into account, the evidence does not support the ULJ's determination that he is disqualified from receiving unemployment benefits. We disagree.

The construction of statutes governing eligibility and disqualification for unemployment benefits is a question of law that we review de novo. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). We review a ULJ's findings in the light most favorable to the decision as long as there is evidence that substantially sustains those findings. Minn. Stat. § 268.105, subd. 7(d)(5) (2006); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will uphold the ULJ's conclusion if it is substantially supported by the evidence and not "arbitrary or capricious." Minn. Stat. § 268.105, subd 7(d) (2006); *see Lolling*, 545 N.W.2d at 377.

Relator does not appear to dispute the ULJ's finding that he is ineligible for a part of his unemployment benefits because he is receiving a pension. Therefore, we must decide (1) whether the ULJ properly refused to consider relator's job-search records and (2) whether relator was actively seeking and available for suitable employment.

A. Consideration of relator's additional evidence

We defer to the ULJ's decision not to hold an additional evidentiary hearing and will reverse that decision only for an abuse of discretion. *See Skarhus*, 721 N.W.2d at

345. The ULJ must order an additional evidentiary hearing upon a showing that evidence not submitted at the initial hearing "(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision." Minn. Stat. § 268.105, subd. 2(c) (2006). Relator has failed to make such a showing.

Relator does not claim that false evidence was submitted at the evidentiary hearing. And relator has not shown that he had good cause for failing to mention his job-search records during the hearing. Although the ULJ recognized that relator's job search was "not an issue that notice was sent out on," relator stated that he was comfortable discussing his job search.

Moreover, the ULJ properly concluded that consideration of relator's job-search records does not change the outcome here. Relator admitted that he "kind of waited until May" to start looking for employment. Relator never indicated that he had kept any job-search records of his "word of mouth" process. He testified that he was looking for "certain types of work, other than construction work" and "something where there's no real physical work." On reconsideration, after relator submitted a list of 24 potential employers he had contacted, the ULJ "f[ound] it doubtful that one would forget that they have been creating such an extensive employer-contact list." And the ULJ pointed out that although relator's testimony "indicated that he was not only uninterested in obtaining new construction jobs but that he was retiring from that industry," his "contact list

indicated that about one third of his employment contacts since leaving Contractor[']s Edge were with construction companies."

The ULJ further found that "[e]ven if some of [relator's] list is to be believed, it does not contain sufficient employment contacts to show that he made the diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment." We conclude that the record supports this conclusion. Relator sought unemployment benefits for 24 weeks. Even if he contacted 24 potential employers about employment opportunities, one per week, his testimony establishes that he did not apply for a single job during those 24 weeks. Therefore, consideration of relator's job-search records does not change the outcome of the decision, and it was within the ULJ's discretion to deny relator's request for reconsideration.

B. Actively seeking suitable employment

Relator also argues that the evidence does not reasonably support the ULJ's conclusion that he was not actively seeking suitable employment. We disagree.

"Actively seeking suitable employment" means to make

> those 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). To be "[a]vailable for suitable employment" means to be "ready and willing to accept suitable employment in the labor market area." Minn. Stat. § 268.085, subd. 15(a) (2006).

Because the ULJ did not abuse his discretion in refusing to consider relator's job-search records, our record is limited to relator's testimony. And relator's testimony supports the ULJ's finding that he was not actively seeking suitable employment. Relator admitted that he "kind of waited until May" to start looking for employment and that he "would talk to people [to see] if they had anything coming up." And relator did not apply for a single job until May 2, 2007, six months after he was seasonally laid off from Contractors Edge. Accordingly, we conclude that the ULJ's conclusion is supported by substantial evidence in the record and is not arbitrary or capricious.

Affirmed.