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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1701**

Enterprise Communications Inc.,
Relator,

vs.

Nancy D. Garrison,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 28, 2008
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 1678 07

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator-employer brings a certiorari appeal from an unemployment-law judge's (ULJ) determination that respondent unemployment-benefit applicant was actively seeking suitable employment during her unemployment-benefit period. Because the ULJ's decision is supported by substantial evidence in the record, we affirm.

FACTS

This case presents the third in a series of appeals to this court by relator Enterprise Communications, Inc. (ECI) regarding the award of unemployment benefits by respondent Department of Employment and Economic Development (DEED) to respondent Nancy Garrison. Garrison worked as a part-time consultant for ECI from September 1997 through January 28, 2004, when she was laid off because her job assignment at Imation Corporation ended.

On January 29, Garrison spoke with Terry Hendriksen, ECI's chief executive officer, who told her that ECI did not have any other work for her at that time. Hendriksen asked Garrison to wait a couple of weeks to file for unemployment benefits so that he could have additional time to find her work. On February 3, Hendriksen called Garrison regarding two possible work opportunities. Garrison told Hendriksen she was not interested in them due to the locations of the job sites. However, shortly after their conversation, Garrison reconsidered and sent Hendriksen an e-mail asking for more information about one of the opportunities. Hendriksen never responded.

Having not heard from Hendriksen again after February 3, Garrison established an unemployment benefit account effective February 15, 2004. ECI challenged DEED's decision that Garrison was qualified to receive benefits based on Garrison's claimed rejection of the February 3 job offer. We affirmed. *See Enter. Commc'ns, Inc., v. Garrison*, No. A04-1554, 2005 WL 1545314, at *1 (Minn. App. July 5, 2005) (affirming the commissioner's representative's decision that Garrison qualified for benefits), *review denied* (Minn. Sept. 20, 2005). DEED paid Garrison benefits for the last three quarters of 2004.

On December 7, 2004, DEED sent ECI notice of its unemployment tax-rate increase, which reflected the benefits Garrison received as part of ECI's experience rating. ECI challenged its assigned rate, citing "preparation errors" based on the fact that Garrison should not have received benefits. A ULJ affirmed the computation of ECI's tax rate, determining also that this court's previous decision precluded the ULJ from making determinations about Garrison's ongoing eligibility to receive benefits. ECI appealed to this court. On December 19, 2006, this court issued a decision affirming the tax-rate increase but remanding the issue of Garrison's ongoing eligibility for benefits. *Enter. Commc'ns, Inc. v. Dep't of Employment Econ. Dev.*, 724 N.W.2d 758, 760 (Minn. App. 2006).

The ULJ conducted an evidentiary hearing to address whether Garrison was actively seeking suitable employment during her benefit period, February 15, 2004 through September 18, 2004. Following the hearing, the ULJ found that Garrison was actively seeking suitable employment during her benefit period and was therefore eligible

for benefits. Upon ECI's request for reconsideration, the ULJ corrected technical errors in its memorandum but otherwise affirmed the decision. This appeal by writ of certiorari followed.

D E C I S I O N

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the decision is affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)–(6) (2006). We review questions of law de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb findings that are sustained by substantial evidence. *Id.* When determining whether substantial evidence supports the findings, we defer to the ULJ's credibility determinations. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

1. Failure to Contact ECI for Additional Work

During Garrison's benefit period, the unemployment-benefits statute stated: "An applicant shall be 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(2) (Supp. 2003). "Actively seeking suitable employment' means 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." Minn. Stat.

§ 268.085, subd. 16(a) (2002). “To be considered ‘actively seeking suitable employment’ an applicant shall, when reasonable, contact those employers from whom the applicant was laid off due to lack of work and request suitable employment.” *Id.*, subd. 16(b).

It is undisputed that Garrison did not contact ECI about employment after sending the February 3 e-mail to Hendriksen. The issue before the ULJ was whether Garrison’s failure to do so was unreasonable. The ULJ concluded it was not, specifically finding:

Garrison did not contact ECI to request work because Hendriksen told her on February 3, 2004, that he would call her if ECI had any work for her. Garrison reasonably believed, based on Hendriksen’s statement, that if ECI had work for her it would contact her. And when Garrison filed for unemployment benefits, after delaying her filing at Hendriksen’s request, the relationship between Garrison and Hendriksen became acrimonious. This is evident from the transcript of the unemployment hearing held in April 2004, which is part of the record in this case, and the procedural history following it.

ECI challenges these findings, arguing there is no evidence of an “acrimonious” relationship and that the dealings between the parties only became adversarial after ECI exercised its legal right to challenge Garrison’s receipt of unemployment benefits and the subsequent increase in ECI’s tax rate.

But the record contains ample support for the ULJ’s determination that Garrison’s failure to contact ECI during her benefit period was not unreasonable. ECI set the pattern Garrison reasonably followed on January 29, when Hendriksen asked Garrison not to apply for unemployment benefits because he would try to find another project for her. This pattern continued on February 3, when Hendriksen did not respond to Garrison’s e-mail inquiring about a particular employment opportunity. Hendriksen testified on

April 19, 2004 that “[t]he way [their] conversation on February 3 ended was that [ECI] should talk to [Garrison] if [it] found something close to her home that she could do.” Garrison also testified that she had attached an updated resume to the e-mail she sent Hendriksen on February 3 and “thought that he would either call . . . or e-mail [her].” Hendriksen testified that, although he had possible jobs for Garrison that would have been “suitable,” he did not contact Garrison about them after the February 3 conversation because he assumed she would turn them down due to the location of the work sites.

Garrison also testified that things had gotten “very adversarial,” even before she applied for benefits, stating, “Why would I go back to someone who I felt mistreated me and had really mishandled how I left the company after being there for nearly seven years.” She stated that by the time of the February 3 conversation, “things had gotten a little testy . . . [and she] truly didn’t believe [the] opportunities [Hendriksen offered] existed.” Garrison acknowledged ECI had the legal right to challenge her receipt of unemployment benefits, but testified it was “the manner in which [Hendriksen] did it” that contributed to the acrimony.

Overall, the record supports the ULJ’s finding that Garrison reasonably believed ECI would contact her if it had any work and that the relationship between them was acrimonious. Because we view the record in the light most favorable to the ULJ’s findings and defer to the ULJ’s credibility determinations, we conclude Garrison’s decision not to contact ECI about additional work was not unreasonable.

2. Suitable Employment in the Applicant's Labor Market

ECI appears to largely concede its argument that Garrison did not demonstrate she sought employment in her labor market because she limited her search to the area within 30 miles of her home. We nonetheless conclude that this argument lacks merit and that the record supports the ULJ's determination that Garrison sought suitable employment in her labor market area.

Garrison testified that she searched for work using Minnesota Job Banks, attended a DEED-sponsored seminar, posted her resume on CareerBuilder, looked in the newspaper, made contacts through word-of-mouth, and that she concentrated these efforts within a 30-mile radius of her home. ECI submitted a map DEED prepared from its labor market statistics showing where individuals who live in Garrison's community work in the metropolitan area. The ULJ cited this map as evidence that Garrison's 30-mile radius search was reasonable. This finding is supported by the record. ECI does not otherwise challenge the sufficiency of Garrison's work search activities.

Affirmed.