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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-326**

Christopher Salminen,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed November 3, 2009
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 21390359-3

Christopher R. Salminen, 1302 Oakview Way, Anoka, MN 55303-1318 (pro se relator)

Lee B. Nelson, Amy R. Lawler, 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 Bjorkman, Presiding Judge; Peterson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that relator
was ineligible to receive unemployment benefits because he was unwilling to quit school

to accept suitable employment. Because there is substantial evidence in the record to support the decision, we affirm.

FACTS

For the past 13 years, relator Christopher Salminen has worked as a delivery driver with various employers. Most recently, relator was employed as a driver with Freedom Cartage, Inc. (Freedom) from October 2007 to October 2008. Relator typically started around 7:00 a.m. with a variable ending time, depending on what had to be accomplished that day, but generally worked more than a 40-hour week. Relator was scheduled Monday through Friday and occasionally on Saturday.

In August of 2008, relator began attending Hennepin Technical College, pursuing an associate's degree in accounting. Relator's course schedule included afternoon and evening classes. Relator continued working for Freedom while attending classes until he was laid off in October. Relator subsequently established an unemployment benefit account, effective October 26, 2008.

In completing the Unemployment Insurance Request for Information questionnaire, relator provided his course schedule and answered "yes" when asked if school affected his ability to seek or accept a job. Relator explained that "[i]t does in the fact that finding work around those hours will be difficult." When asked whether he was "willing to quit school if offered a suitable job that interferes or conflicts with [his] school schedule," relator answered "no," explaining that "[e]ducation is my first priority right now." Relator was determined to be ineligible for unemployment benefits on November 12, 2008.

Relator appealed the determination of ineligibility, and an evidentiary hearing was held before the ULJ on December 9, 2008. At the hearing, relator stated that he would be willing to quit school and go back to working as a delivery driver. When questioned about his previous answers on the questionnaire, relator stated that “I think I was misinterpreting the questionnaire.” However, the ULJ noted in response that:

It seemed real clear to me that you were, you understood it very well. You told us the days you were currently attending school. Does your schooling affect your ability to seek or accept a job, I’m on Exhibit 4, page one, yes. If yes, explain. It does in the fact that finding work around those hours will be difficult. And looking at your schedule from Freedom, you might be able to pull off Wednesdays and Thursdays if you’re lucky enough not to have a long day, but Monday, your Monday classes would go down the tubes.

Relator stated he should have considered that, “but since all my classes are in the evening, they shouldn’t really pose a problem to find [sic] suitable employment. And I have been looking for employment around the hours of school. But if it, you know, came down to it, I would withdraw, yes.” When asked by the ULJ whether he was willing to quit school, relator indicated that he did not think he could return to his previous employers because they are “probably on the borderline of going bankrupt and dissolving,” and, with bills piling up, “school would have to be, you know, become very quickly secondary if it starts getting pretty bad.” Relator’s schooling and books are financed by means of a Stafford loan and relator’s living expenses are paid through his wife’s employment.

The ULJ found that relator “is only willing to quit school to accept suitable full time employment if finances get too difficult to manage.” The ULJ determined that

relator was ineligible for unemployment benefits because relator was “not available for suitable employment,” reasoning:

Salminen has worked as a delivery driver for over 13 years. His normal working hours are daytime hours, with some evening work. If he continues to work in similar jobs, he will continue to earn between \$12 and \$14 per hour. Salminen would like to have a career, and right now, obtaining a degree in accounting is his first priority. As an accountant, he will earn at least 50% more than he has been earning. Finances are tight for him, but between his student loans and his wife’s employment, attending school is possible. He is only willing to quit school to accept suitable full time employment if finances get too difficult to manage. Because he is not willing to quit school to accept suitable employment, Salminen is not available for suitable employment, and consequently he is ineligible for unemployment benefits.

The ULJ subsequently affirmed her decision. This certiorari appeal follows.

D E C I S I O N

Under Minn. Stat. § 268.105, subd. 7(d)(5) (2008), we may reverse or modify the ULJ’s findings or inferences if they are “unsupported by substantial evidence in view of the entire record as submitted.” “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. As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Northwest Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008). However, “[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2008). This court will affirm if “[t]he

ULJ's findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making a credibility determination).

In order to be eligible to receive unemployment benefits, an applicant must be "available for suitable employment." Minn. Stat. § 268.085, subd. 1(4) (2008). An applicant is considered "available for suitable employment" if the "applicant is ready and willing to accept suitable employment in the labor market area." *Id.*, subd. 15(a). "An applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment." *Id.* Further, when the applicant is a student, the applicant "must be willing to quit school to accept suitable employment" in order to be considered "available for suitable employment." *Id.*, subd. 15(b).

Relator argues that the ULJ erred in her determination that relator was unavailable for suitable employment based on his class schedule. The Minnesota Supreme Court has previously addressed the issue of school enrollment and applicant eligibility in *Hansen v. Continental Can Co.*, 301 Minn. 185, 221 N.W.2d 670 (1974). Although decided under a prior version of the eligibility statute that did not require student-applicants to quit school, the *Hansen* court opined that "[a] claimant may further his education while unemployed and still receive benefits so long as he meets the statutory requirements for eligibility and the tests for availability." *Id.* at 188, 221 N.W.2d at 672. Acknowledging that "[a]ttending college does not by definition make a claimant unavailable for work,"

the court held that a claimant still “must be accessible or attainable for work when suitable work is offered at such hours as are customary in the type of employment to which he is suited. He must be genuinely attached to the labor market.” *Id.* at 187, 221 N.W.2d at 672 (quotations omitted). In a subsequent student-applicant case, the Minnesota Supreme Court held that the determination whether a student is willing to quit school is a factual one. *Goodman v. Minn. Dep’t of Employment Servs.*, 312 Minn. 551, 553, 255 N.W.2d 222, 223 (1977).

In order to be “available for suitable employment,” Minn. Stat. § 268.085, subd. 15(b), requires that student-applicants be willing to quit school to accept suitable employment. When he initially completed the Unemployment Insurance Request for Information questionnaire, relator responded that he was not willing to quit school if offered suitable employment that conflicted with his school schedule, explaining that education was his first priority right now. However, at his appeal hearing, relator told the ULJ that he would be willing to quit school if offered suitable employment. When asked about the inconsistency, relator stated that he misinterpreted the questionnaire. Based on relator’s detailed responses to the questionnaire, the ULJ decided that relator had not misinterpreted the questions. Moreover, after listening to relator’s testimony, the ULJ found that “[u]nless [relator’s] financial situation gets ‘pretty bad,’ school will not become secondary to employment which would require him to quit school.” Having made a factual determination that relator was unwilling to quit school unless financially forced to, the ULJ held that “[b]ecause he is not willing to quit school to accept suitable

employment, Salminen is not available for suitable employment, and consequently he is ineligible for unemployment benefits.” We agree.

“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). The ULJ could have found that relator had not fully understood the questionnaire when he responded that he was not willing to quit school or that relator’s circumstances had changed since he completed the questionnaire. Instead, the ULJ found that relator would like to have a career and obtaining an accounting degree is currently his first priority.

The ULJ was in the best position to make a factual determination as to relator’s willingness to quit school; his attachment to the workforce; and his credibility. Based on relator’s initial responses to the unemployment questionnaire; the impact relator’s school schedule would have on his availability for delivery jobs; and the ULJ’s determination that relator’s financial state prevails over his attachment to the workforce, we conclude there is substantial evidence in the record to support the ULJ’s determination of ineligibility.

Relator also argues that the ULJ failed to make specific findings that suitable work opportunities did or did not exist in relator’s locale or that his employability was affected because of extraordinary economic conditions, citing *Gerson v. Commissioner of Economic Security*, 340 N.W.2d 353 (Minn. App. 1983). *Gerson* dealt with the findings involved when an applicant seeks unemployment benefits while engaged in vocational training. *Id.* at 354-55. The applicant had been denied solely because of an irrebuttable

presumption existing at the time that full-time students were unavailable for work. *Id.* at 354; *see also Shreve v. Dep't of Econ. Sec.*, 283 N.W.2d 506, 508 (Minn. 1979) (holding that the 1977 statutory amendment “creates an irrebuttable presumption that a student is not available for work and is, therefore, not eligible for unemployment compensation unless he meets certain other conditions set forth by the statute”). This court remanded *Gerson* for adequate findings as to whether the student’s coursework fell within the vocational training exception. 340 N.W.2d at 354-55. However, relator’s reliance on *Gerson* for particular findings in this case is misplaced as *Gerson* was decided pursuant to earlier rules promulgated by the department. The administrative rule governing approved training courses discussed by the *Gerson* court was later repealed in 1999. 1999 Minn. Laws ch. 107, § 67 at 456.

Because the record substantially supports the ULJ’s finding that relator was not willing to quit school in order to accept suitable employment, the ULJ did not err in deciding that relator was not “available for suitable employment” pursuant to Minn. Stat. § 268.085, subd. 15, and thus ineligible for unemployment benefits under Minn. Stat. § 268.085, subd. 1.

Affirmed.