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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1547**

Richard Odoms,
Relator,

vs.

SMSC Gaming Enterprises - Mystic Lake Casino,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 29, 2018
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 35639256-3

Richard E. Odoms, Hamburg, Minnesota (pro se relator)

Gregory S. Paulson, Brodeen & Paulson PLLP, Minneapolis, Minnesota (for respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, St.
Paul, Minnesota (for respondent department)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Pro se relator challenges the decision of the unemployment-law judge (ULJ) on reconsideration that relator is ineligible for unemployment benefits because he did not actively seek suitable employment during the period that he was on medical leave. Relator also argues that his rights to due process and a fair hearing were violated. We affirm the ULJ's decision.

FACTS

In February 2017, relator Richard Odoms took time off from his job as a security officer at SMSC Gaming Enterprises d/b/a Mystic Lake Casino (SMSC) because of back pain. Odoms went to see a chiropractor a few days after his pain began. After evaluating his condition, his chiropractor suggested he take a few days off from work and schedule an appointment with a physician. The next day Odoms saw a physician and, after undergoing an MRI, the physician determined that Odoms was experiencing back pain because of two herniated disks. On April 11, Odoms's doctor wrote a letter defining his work restrictions, which included: "No prolonged standing, no stairs, no lifting over 2 pounds, no stairways, four hour shifts instead of eight hour shifts."

After Odoms missed some shifts at work due to this injury, SMSC placed him on a medical leave of absence effective February 22. This medical leave of absence lasted for around 90 days. About two and a half months later, he applied for unemployment benefits. Odoms established a benefits account on April 30 and received several weekly disbursements of \$170. On May 19, the Minnesota Department of Employment and

Economic Development (DEED) determined that Odoms was ineligible from receiving any unemployment benefits because he had failed to actively seek suitable employment while he was unemployed.¹ On June 8, Odoms returned to work for SMSC and was able to engage in his routine shifts and duties. Odoms appealed DEED's determination, and a hearing was scheduled for June 27.

At the hearing, both Odoms and a representative of SMSC were present, along with two other witnesses for SMSC. Odoms admitted that he had notice that one of the requirements for unemployment-benefit eligibility was seeking suitable employment while collecting unemployment benefits. He also admitted that he did not look for work because it would not have made sense to look for temporary work when he was planning to return to his job at SMSC as soon as he was physically able. The ULJ issued a decision holding that Odoms was ineligible because he was not actively seeking employment while receiving benefits.

Odoms filed a request for reconsideration, arguing that the ULJ's decision was flawed because (1) Odoms was deprived of due process when he was surprised by the presence of SMSC witnesses; (2) a different judge should have considered his request for reconsideration; and (3) he was exempt from looking for work during the period in which he was unable to work at SMSC because he was still employed by SMSC. The ULJ denied Odoms's request for reconsideration. This appeal follows.

¹ Odoms also received two earlier determinations. The first, on May 15, 2017, said that his receipt of social security retirement benefits did not result in a reduction of his weekly unemployment benefit amount. The second, on May 19, 2017, said he was eligible for unemployment benefits "if all other requirements are met."

DECISION

I. Odoms's due-process rights were not violated.

Odoms argues that the decision to find him ineligible for benefits was flawed because he had no prior notification that his employer would be involved at the hearing. He also argues that the unemployment-insurance statutory scheme violates due process of law because the same ULJ who presided at the de novo due-process hearing was allowed to decide his subsequent request for reconsideration. Odoms is incorrect, and we address his due-process arguments in turn.

Contrary to Odoms's claim, DEED provided him with notice that his employer would have the ability to attend his evidentiary hearing and present evidence on its behalf. This notice was provided to him in the form of a "Notice of Hearing" that designated his employer as an interested party in this action. *See* Minn. Stat. § 268.105, subd. 1 (Supp. 2017) ("[t]he chief unemployment law judge must set a time and date for a de novo due process hearing and send notice to any applicant and any employer"). Moreover, Odoms was also sent instructions—under applicable administrative rules—to help him identify witnesses the other party intended to have testify at the hearing. Minn. R. 3310.2905, subp. 2(E), 3310.2914, subp. 2. Thus, Odoms knew or should have known that his employer had the right to be involved at this stage of his eligibility determination.

Odoms claims that his right to due process also requires that a different ULJ decide his request for reconsideration as opposed to the ULJ who presided over the hearing. This argument fails. Requests for reconsideration—like new-trial motions—allow the court an "opportunity to correct its own errors without subjecting the parties and the appellate courts

to the time, expense, and inconvenience involved in an appeal.” *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). Odoms received one hearing in front of an impartial decision-maker. Aside from this hearing, Odoms is allowed to file a request for reconsideration and appeal the denial of that request to this court to challenge any perceived errors. But Odoms is not entitled to have a different ULJ decide his request for reconsideration because procedural due process does not—contrary to Odoms’s suggestion—provide a right to consideration of his unemployment appeal by two different ULJs. See *Juster Bros., Inc. v. Christgau*, 214 Minn. 108, 119, 7 N.W.2d 501, 508 (1943) (“Notice and *an opportunity* to be heard are universally recognized as essential to due process.”) (emphasis added); see also *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976) (the hallmark of procedural due process is “the opportunity to be heard at *a meaningful time* and in *a meaningful manner*.”) (quotation omitted) (emphasis added).

II. The ULJ did not err in determining that Odoms was ineligible for unemployment benefits because he failed to actively seek employment.

Odoms contends that the record does not contain substantial evidence to support the ULJ’s determination that he failed to actively seek employment. To be eligible for unemployment benefits, individuals seeking benefits must meet “all of the ongoing eligibility requirements under section 268.085.” Minn. Stat. § 268.069, subd. 1(3) (Supp. 2017). One of the enumerated eligibility conditions contained in section 268.085, subd. 1 is that the “applicant was actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(5) (Supp. 2017). “Actively seeking suitable employment” is defined as an applicant making “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) (Supp. 2017). Moreover, “[l]imiting the search to positions that are not available” does not meet the definition of “actively seeking suitable employment.” *Id.*

During his de novo due-process hearing with the ULJ, Odoms admitted to not looking for any other work during his medical-leave period. He explained that he had not looked for employment “because [he] knew [he] was going back [to SMSC] and [he is now] back.” He also went on to explain that looking for work he would be able to do while on his work restrictions defied “common logic.” This argument also fails.

Unemployment-insurance benefits are meant to provide “workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed.” Minn. Stat. § 268.03, subd. 1 (Supp. 2017). Minnesota’s unemployment-insurance program is not meant as a short-term disability program, and it does not defy common sense or logic to require people—even in Odoms’s situation—to look for work when they are restricted from engaging in their regular employment. The unemployment-insurance program aims to help displaced workers survive while they become reemployed as soon as possible. This aim is possible only if the statutory command that unemployed workers must be “actively seeking suitable employment” is followed. Minn. Stat. § 268.085, subd. 1(5). While many employers might not have been suitable for an employee with Odoms’s work restrictions or time constraints, those limitations relate to his chances of becoming employed and not to the reasonable

efforts *he made* to find a job that did not violate his work restrictions before returning to SMSC.

Although Odoms stayed in contact with SMSC during his separation period, that did not meet the requirement to seek suitable employment because he was not able to work at SMSC when he was collecting unemployment benefits. By doing nothing except remaining in contact with his employer, he expressly limited his job search to “positions that [were] not available” to him. See Minn. Stat. § 268.085, subd. 16(a). Because he did not comply with one of the enumerated ongoing eligibility requirements, Odoms was not eligible for unemployment benefits. Minn. Stat. § 268.085, subd. 1(5); *see also McNeilly v. Dept. of Emp’t and Econ. Dev.*, 778 N.W.2d 707, 708 (Minn. App. 2010) (holding that seasonally unemployed employees are not exempt from actively seeking employment even if they are still employed by their seasonal employer).

On this record, it appears that Odoms failed to engage in a reasonable effort to obtain other suitable employment during his medical-leave period from SMSC. Moreover, although he chose not to search for other employment, he admitted that he could have attempted to search for jobs that complied with his restrictions and allowed him to earn wages before returning to SMSC. We conclude that the record contains substantial evidence to support the ULJ’s finding that Odoms was not actively seeking employment from April 30, 2017 to June 7, 2017.

Affirmed.