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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1238**

Charlotte Only,
Relator,

vs.

Regency Home Healthcare,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 3, 2019
Affirmed
Cochran, Judge**

Department of Employment and Economic Development
File No. 36448825-2

Judah A. Druck, Michael L. Sheran, Maslon LLP, Minneapolis, Minnesota; and

Max Heerman, Medtronic, Inc., Washington, D.C. (for relator)

Regency Home Healthcare, Maple Grove, Minnesota (respondent employer)

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

Considered and decided by Cochran, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Relator Charlotte Only challenges the decision of an unemployment law judge (ULJ) on reconsideration that relator was ineligible for unemployment benefits beginning November 5, 2017, because she was unavailable for, and avoided offers of, suitable employment. Relator argues that the ULJ erred by (1) exceeding the noticed scope of the hearing; (2) denying benefits starting November 5, 2017, when evidence demonstrates relator was enrolled in a dislocated worker program; (3) denying benefits after December 20, 2017, based on a flawed credibility determination; and (4) failing to develop a complete evidentiary record. We affirm.

FACTS

Charlotte Only worked as a part-time personal-care attendant at Regency Home Healthcare (Regency) beginning in May 2013. Regency would regularly contact Only to place her with a client, and Only worked in the client's home. On October 20, 2017, Only completed an assignment with Regency. While waiting for Regency to contact her for further work, Only established an account for unemployment benefits, effective on October 22, 2017.

On November 2, Regency called Only to inquire about placing her with new clients. Regency left a voicemail message for Only because she did not answer. Later that day, Only called Regency and left a voicemail message explaining that she was going to be out of town for the next month to care for her parents. She stated that she would be back by

December and would “keep in touch.” But Only did not leave town and did not contact Regency again in November or December.

On November 17, Only went to the WorkForce Center where she applied to the Dislocated Worker Program. Only wanted to receive training to become a certified nursing assistant (CNA).

In December and January, Regency repeatedly attempted to place Only with clients. Regency called Only on December 20, December 28, and January 9. Each time, Regency left a voicemail message telling Only that Regency had hours and clients available. On January 12, Only called back and left a voicemail indicating that she was enrolled in the Dislocated Worker Program and had “to stay on [her] unemployment until [she] finish[ed] [her] CNA classes.” As of March 6, 2018, the date of the hearing, Only had not attended any CNA trainings or classes.

On February 6, 2018, the Department of Employment and Economic Development (DEED) issued a determination of eligibility for unemployment benefits for the period beginning December 20, 2017. The determination stated that Only did not refuse or avoid an offer of employment from Regency on December 20, December 28, or January 9. Regency appealed and an evidentiary hearing was conducted by a ULJ. Before the hearing, DEED sent Only a notice of the hearing, which stated that the issue for the evidentiary hearing was “whether [Only] is ineligible [for unemployment benefits] for eight calendar weeks for failing to apply, refusing, or avoiding an offer of suitable employment without good cause.”

During the evidentiary hearing, the ULJ raised an additional issue—whether Only was available and actively seeking suitable employment. The ULJ raised the issue based on information Only provided at the hearing. The ULJ told Only that “normally, we have to give a ten-day notice to the parties to let them know that there’s going to be an [additional] issue discussed at a hearing. If you’re willing to waive that notice . . . I can address both the . . . refusal issue and your availability issue at this hearing.” Only stated that she was “ready to discuss this,” and the ULJ expanded the scope of the hearing. Only and Bridgeman, a representative of Regency, both testified. Bridgeman testified that she attempted to contact Only multiple times and that Only was still considered an active employee at Regency. Only maintained that she did not receive the December voicemails and thus did not know about any offers of employment. She stated that her home number “is just a fax number now” and that she “will get a message though, sometimes through [her] fax machine.” Only provided various exhibits to the ULJ, such as a business card and a job search webpage.

The ULJ issued a written decision which included findings on both issues of ineligibility. On the issue of whether Only avoided an offer of suitable employment without good cause, the ULJ determined that Only avoided an offer of employment from Regency on December 20, 2017 without good cause, and therefore she was not eligible for unemployment benefits for eight calendar weeks on that basis. While Only testified that she did not receive the message on December 20, the ULJ did not find her testimony credible. On the issue of availability, the ULJ determined that Only was not available for or actively seeking suitable employment from November 5, 2017 to March 6, 2018, the

date of the hearing. For that reason, the ULJ concluded that she was not eligible for unemployment benefits during that time period or until her conditions changed in that regard. The ULJ did not consider the time period before November 4 because Only's availability between October 22, when she applied for unemployment benefits, and November 4 was the subject of a prior proceeding. Only requested reconsideration, and the ULJ affirmed his decision.

This appeal follows by writ of certiorari.

DECISION

Only contends that the ULJ erred by (1) exceeding the scope of the hearing, (2) denying her unemployment benefits when evidence demonstrated that she was enrolled in the Dislocated Worker Program, (3) denying her unemployment benefits based on a credibility determination regarding her testimony about the pre-December 20 period, and (4) failing to develop an evidentiary record.

When reviewing the ULJ's decision, this court may affirm, remand for further proceedings, or it may reverse or modify the decision "if the substantial rights of the petitioner may have been prejudiced." Minn. Stat. § 268.105, subd. 7(d) (2018). This court reviews the ULJ's factual findings in the light most favorable to the decision, and we "will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotation omitted). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). This court applies a de novo standard when

reviewing questions of law. *Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137, 142 (Minn. App. 2017).

I. The ULJ did not unlawfully expand the scope of the evidentiary hearing.

Unemployment benefits are intended to assist those who are discharged through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2018). An applicant for unemployment benefits must meet a number of eligibility requirements, including that the applicant was available for and actively seeking suitable employment. Minn. Stat. § 268.085, subd. 1 (2018). On receiving an application, DEED must make an initial eligibility determination. Minn. Stat. § 268.101, subd. 2 (2018). Then, if the initial determination is timely challenged by the employer or employee, a hearing must be held before a ULJ. Minn. Stat. § 268.105, subd. 1(a) (2018). The ULJ must generally send a notice of hearing to the parties at least ten days before the scheduled hearing date. Minn. R. 3310.2905, subp. 2 (2017). The notice must include the time and date of the hearing, along with a statement of the issues to be considered. *Id.* But, the ULJ may “take testimony and render a decision on issues not listed on the notice of hearing if each party is notified on the record, is advised of the right to object, and does not object.” Minn. R. 3310.2910 (2017).

Here, the notice of hearing stated that the issue to be considered at the evidentiary hearing was “[w]hether Charlotte M Only is ineligible for eight calendar weeks for failing to apply, refusing, or avoiding an offer of suitable employment without good cause.” At the evidentiary hearing, the ULJ stated he also needed to address the question of Only’s availability for suitable employment and asked Only if she was willing to waive notice of this new issue. The ULJ stated:

[B]ased on, on the information that I'm hearing today, I think there's an issue of your availability for suitable employment from November 4 and going into December into January. So I'm going to be looking at your . . . availability for suitable employment beginning November 4, and if you're comfortable with me addressing that issue today, we can continue to discuss that. If you're not willing to waive notice on that and you want more time to prepare, then we have to come back and, and discuss that in a couple of weeks.

Only replied, "No, I'm ready to discuss this."

Only argues that the ULJ committed reversible error by expanding the scope of the evidentiary hearing to include an issue that involved an earlier time period than that encompassed by the issue noticed. In other words, Only argues that the ULJ improperly expanded the scope of the hearing to include the period from November 4 to March 6, instead of focusing on the eight-week period starting on December 20, which was the time period in question with regard to the noticed issue. Only states that while the ULJ may expand the issues to be decided at an evidentiary hearing under rule 3310.2910, the ULJ cannot expand the temporal scope under this rule because a temporal scope does not qualify as an "issue." We are not persuaded. The ULJ did not simply expand the temporal scope. The ULJ considered the issue of availability, which is a requirement for eligibility under Minn. Stat. § 268.085, subd. 1, and thus a proper issue for consideration. The time period was necessarily expanded because Only testified that she did not work after October 2017.

Only also argues that her waiver of notice was inadequate because she was confused by the ULJ's questions. While Only may have been initially confused by the ULJ's questioning, the ULJ clarified the time period and issue he was interested in addressing. The ULJ explained that a previous proceeding had covered her availability from

October 22, 2017 to November 4, 2017. Only acknowledged there was a previous proceeding, and told the ULJ she was “ready to discuss” her availability beginning from November 4, 2017. The ULJ adequately and thoroughly explained the new issue of her availability and Only gave an express waiver of notice.

The ULJ informed Only of the new issue, asked if she had any objection, and Only replied that she was ready to discuss her availability for suitable employment. The ULJ complied with Minn. R. 3310.2910 and did not unlawfully expand the scope of the hearing.

II. The ULJ did not err in his denial of unemployment benefits.

As noted above, an applicant generally must be available for and actively seeking suitable employment to be eligible for unemployment benefits. Minn. Stat. § 268.085, subd. 1(4), (5). There is an exception to this requirement if the applicant is in “reemployment assistance training.” *Id.*, subd. 1(4), (5). A person is in reemployment assistance training when:

- (1) a reasonable opportunity for suitable employment for the applicant does not exist in the labor market area and additional training will assist the applicant in obtaining suitable employment;
- (2) the curriculum, facilities, staff, and other essentials are adequate to achieve the training objective;
- (3) the training is vocational or short term academic training directed to an occupation or skill that will substantially enhance the employment opportunities available to the applicant in the applicant’s labor market area;
- (4) the training course is full time by the training provider; and
- (5) the applicant is making satisfactory progress in the training.

Minn. Stat. § 268.035, subd. 21c(a)(1)-(5) (2018). Additionally, the training must have actually started or be scheduled to start within 30 calendar days. *Id.*, subd. 21c(d).

The ULJ found that Only was not available for suitable employment or actively seeking suitable employment because she failed to contact Regency about returning to work, and her “attachment to the work force was not genuine and she was not making reasonable or diligent efforts to obtain employment.” The ULJ also found that Only was not enrolled in reemployment assistance training. While Only testified that she has been enrolled in the Dislocated Worker Program since November 17, 2017, the ULJ did not find her testimony credible. The ULJ explained that “Only provided a business card for an employment guidance counselor, but that does not prove she was found eligible or enrolled in the Dislocated Worker Program.”

Only argues that the ULJ erred by denying unemployment benefits because she was involved with the Dislocated Worker Program. In addition to the business card, Only provided the ULJ with a document that stated she had registered with the Dislocated Worker Program. But registering with the Dislocated Worker Program alone does not qualify as being “in reemployment assistance training” within the meaning of the statute. By its terms, section 268.035, subdivision 21c(a) requires that the applicant be enrolled in training “full time” or be scheduled to start within 30 days. Only testified at the evidentiary hearing held on March 6, 2018, that she was not enrolled in any training, and was instead waiting for classes which were scheduled to begin on May 29, 2018. Because Only was not actually enrolled in training at the time of the hearing, and any potential training was to begin outside of the 30-day window, Only was not in reemployment assistance training within the meaning of section 268.035, subdivision 21c(a).

The record supports the ULJ's determination that Only was not available for suitable employment or actively seeking employment since November 5, 2017. The record also shows that Only was not enrolled in reemployment assistance training, which is necessary to receive unemployment benefits pursuant to the exception for an "applicant who is in reemployment assistance training" under Minn. Stat. § 268.085, subd. 1(4), (5). The ULJ did not err by denying Only unemployment benefits.

III. The ULJ did not err in his credibility determination.

When the credibility of the involved parties testifying had a "significant effect on the outcome of [the] decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2018). Only argues that the ULJ's credibility determination was insufficiently developed and violated her right to a fair trial. She challenges the adequacy of the reasoning by the ULJ.

The ULJ found that Only was not credible because her testimony was inconsistent, vague, and did not make sense. Explaining his determination, the ULJ stated:

The preponderance of the evidence shows that Only avoided an offer of suitable employment from [Regency] on December 20, 2017. The evidence shows that Bridgeman called and left a message for Only on December 20, 2017 about available clients. Only testified that she did not receive the message, but the [ULJ] did not find her testimony credible. Only's testimony was inconsistent, vague, and did not make logical sense. Only claims she did not go out of town, but she never contacted [Regency] about returning to work even though she knew there was work available. Only acknowledged that she did not contact [Regency] about other clients after she decided to stay in town and she was unable to provide a reasonable or convincing explanation for her failure to contact [Regency] about returning to work. Bridgeman's testimony was credible because it was detailed, specific, and

consistent. Bridgeman was able to provide specific detail about when she called Only and what Only told her in her voicemail messages. The greater weight of the evidence shows that Only received the messages from Bridgeman and avoided the offer of suitable employment.

The ULJ made express credibility determinations and explained his reasoning. When making credibility determinations, the ULJ may consider whether “testimony [is] reasonable compared with other evidence” and whether a witness’s testimony is corroborated by other evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007). Here, the ULJ compared Only’s testimony to the timeline of events and specificity of Bridgeman’s testimony. The ULJ’s reasoning for his credibility determinations is rational and satisfies the statutory obligations of section 268.105, subdivision 1a(a).

IV. The ULJ sufficiently developed the record.

The ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2017). Only argues that the ULJ failed to clearly develop the facts because he did not provide her with the opportunity to clarify perceived inconsistencies in her testimony.

Only does not provide any caselaw to support her argument that when the ULJ does not find an applicant’s testimony credible, the ULJ must provide an opportunity for the applicant to present additional testimony in order to satisfy rule 3310.2921. Instead, she argues that, because the ULJ did not believe her testimony and supporting exhibits regarding her enrollment in the Dislocated Worker Program, the ULJ should have provided her with the opportunity to present additional testimony or clarifications in order to fulfill

his duty in assisting pro se parties. See Minn. R. 3310.2921 (requiring ULJ to ensure relevant facts are clearly developed). But, the record shows that the ULJ provided ample opportunity for Only to clarify discrepancies in her testimony and further explain her answers. The ULJ asked Only multiple follow-up questions about her enrollment in training, the Dislocated Workers Program, and any steps she was taking to find employment. And, near the end of the hearing, the ULJ asked Only if she wanted to add any additional information. The ULJ thus fulfilled his duty to assist Only and created a sufficient evidentiary record.

The ULJ did not err by expanding the scope of the hearing, making credibility determinations, and denying Only unemployment benefits.

Affirmed.