

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0714**

In the Matter of: Justin Bennek.

**Filed April 12, 2021
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File Nos. 37758194-3, 37775315-3

Justin Bennek, Coon Rapids, Minnesota (pro se relator)

Keri A. Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that he was ineligible for unemployment benefits, arguing that (1) the evidence does not support the ULJ's finding that relator was not available for or actively seeking suitable employment and (2) the telephonic hearing was unfair because of relator's medical condition. We affirm.

FACTS

On October 18, 2019, relator Justin Bennek was laid off from his full-time, seasonal employment with TruGreen. A few days later, he was laid off from his part-time, seasonal employment with Bunker Hills Golf Course. Bennek subsequently established a benefit account¹ with respondent Minnesota Department of Employment and Economic Development (the department), and began requesting unemployment benefits.

The department determined that relator was ineligible for unemployment benefits because he was not actively searching for work. Bennek appealed. Following the December 27 hearing, the ULJ found that “Bennek did not do anything to try to find another job” from November 3 to December 13. The ULJ further found that from December 14, through the date of the hearing, Bennek “did not take any steps to contact employers or submit job applications because he was not genuinely interested in finding a job.” Based on these findings, the ULJ determined Bennek was not eligible for unemployment benefits from November 3 through the date of the hearing because he was not available for or actively seeking suitable employment. Bennek requested reconsideration, and the ULJ affirmed her decision. Bennek appeals by a writ of certiorari.

DECISION

We review a ULJ’s decision to determine whether a party’s substantial rights were violated because the decision was made upon unlawful procedure, affected by legal error, or unsupported by substantial evidence in view of the record as a whole. Minn. Stat.

¹ Bennek also had a benefit account from the previous year when he was laid off from TruGreen.

§ 268.105, subd. 7(d) (2020). We view the ULJ’s findings in the light most favorable to the decision, giving deference to the ULJ’s credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). And we “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.*

I. Substantial evidence supports the ULJ’s determination that Bennek was not available for or actively seeking suitable employment.

To be eligible for unemployment benefits, an applicant must be “available for” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4), (5) (2020). An applicant is “available for suitable employment” when he is “ready, willing, and able to accept suitable employment.” *Id.*, subd. 15(a) (2020). “Suitable employment means employment in the applicant’s labor market that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2020). An applicant may not otherwise restrict his availability for employment. Minn. Stat. § 268.085, subd. 15(a).

An applicant is “actively seeking suitable employment” when he makes “reasonable, diligent efforts” that a person “in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market.” *Id.*, subd. 16(a) (2020). This requirement is not met when an applicant limits his search to “positions that are not available or are above the applicant’s training, experience, and qualifications.” *Id.* Rather, all applicants—including those who are seasonally unemployed—must seek other suitable employment. *Id.*, subd. 16(c) (2020).

Whether an applicant is available for and actively seeks suitable employment are questions of fact. *Semanko v. Dep't of Emp't Serv.*, 244 N.W.2d 663, 665 (Minn. 1976).

Bennek challenges the ULJ's findings that he was neither available for nor actively seeking suitable employment. He argues that the ULJ's determination is not supported by the record because he "updated my resume," "looked for opportunities that were available on the regular online job search websites," "reached out" to former colleagues, and "did searches of golf courses and their staffing needs." The record defeats Bennek's argument.

The online unemployment-insurance system (UIS) asked Bennek every week if he had looked for work. During every week in November, Bennek answered the question, "No." And when asked more detailed questions regarding the third and fourth weeks of November, Bennek responded that he was not doing anything to look for work. Although Bennek testified that he did not understand the directions on the department's website, he admitted that these answers were true.

The record also reflects that Bennek did not actively seek employment during December. He did begin answering, "Yes," when the UIS asked whether he was looking for work. And he testified that he searched online for positions in the golf-course industry and considered looking at other industries "to see if maybe I could branch out as a last resort." But, as the ULJ found, Bennek "could not remember the name of one of the two websites he claimed he used for his job search." Bennek did not claim that no suitable employment was available; he testified that he did not apply for any positions because he "just wanted to keep my options open." And when asked by the ULJ if there was "anything

else you've done recently to look for jobs that we haven't talked about," Bennek answered, "Nope."

Substantial evidence supports the ULJ's findings that Bennek did not apply for any jobs or take any other steps to obtain suitable employment. On this record, there is no basis to disturb the ULJ's determination that Bennek is not entitled to unemployment benefits because he was not available for or actively seeking suitable employment during the relevant time frame. *See McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 712 (Minn. App. 2010) (affirming a determination that a landscaper who had applied for unemployment benefits during the off-season had not actively sought employment when his job-search efforts consisted of "ask[ing] around for work").

II. Bennek received a fair hearing.

A ULJ is obligated to "assist all parties in the presentation of evidence." Minn. R. 3310.2921 (2019). Bennek argues that the ULJ did not meet this obligation because he was "not able to explain my job search properly," was "put on the defensive immediately," and his ADHD and other medical conditions affected his ability to participate in a telephonic hearing. This argument is unpersuasive for two reasons.

First, Bennek provides no legal support for his contention that the telephonic format denied him a fair hearing. We generally do not consider arguments that lack legal support. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation). Second, Bennek does not explain how the hearing was unfair, or how his medical conditions affected his ability to

participate in the hearing. The record reflects that Bennek did not tell the ULJ that he did not understand the proceedings or the questions posed to him. And he did not ask the ULJ for assistance. On reconsideration, the ULJ expressly rejected Bennek's contention that his medical conditions prevented him from accurately and completely responding to questions. In short, the record demonstrates that the ULJ provided Bennek every opportunity to develop the record and explain his situation. *See Ywswfv. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (stating that the ULJ has an obligation to conduct a hearing that clearly and fully develops the relevant facts and preserves the parties' rights to a fair hearing). Bennek received a fair hearing.

Affirmed.