

*This opinion is nonprecedential except as provided by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
A20-0868**

In the Matter of: Alison Wettig.

**Filed June 1, 2021
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File Nos. 37983448, 38000790

Alison Wettig, Somerset, Wisconsin (pro se relator)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Alison Wettig challenges two decisions by an unemployment-law judge (ULJ) determining that Wettig was ineligible for unemployment benefits for two different time periods because she was not actively seeking suitable employment. Wettig asserts that she did not initially understand the requirement to be actively seeking suitable employment but that she made diligent efforts once she understood it. Respondent Minnesota

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Department of Employment and Economic Development (DEED) argues that the decision with respect to the first time period should be affirmed, but that the decision with respect to the second time period should not be entirely affirmed and the matter should be remanded for further development of the record regarding the adequacy of relator's efforts to seek work. We agree with DEED and affirm in part, reverse in part, and remand.

FACTS

Wettig has worked at Andersen Windows as an assembly worker since July 2018. Andersen temporarily laid off Wettig effective January 4, 2020, and scheduled her to return to work on April 6, 2020. In December 2019, before the layoff began, Wettig established an unemployment-benefits account. In response, DEED mailed her a copy of its Unemployment Insurance Information Handbook. The handbook stated, "You must actively look for work even if you . . . expect to return to a seasonal job. You must make a serious effort to find work every week you request a benefit payment." On January 17, 2020, DEED sent Wettig a work search warning reiterating that Wettig must be "looking for work every week that [she] request[s] benefits" and that this requirement applies "even if [she] will be going back to a former employer."

On her benefits application for the week of January 26, 2020, Wettig stated that she did not actively search for work that week. When asked by the DEED system why not, Wettig stated, "I am on seasonal lay off from my current job. I plan on returning as soon as they call me back. Therefore, I don't need to search for jobs currently." Wettig's answer to whether she had actively searched for work and her explanation why she had not were similar in her benefits application for the week of February 2, 2020.

On February 6, 2020, DEED mailed Wettig a determination of ineligibility for the week of January 26, explaining that Wettig did not actively search for employment that week. DEED assigned this determination of ineligibility Issue No. 37983448.

Andersen called Wettig back for a week of work beginning February 9, 2020.

On February 13, 2020, DEED mailed Wettig a determination of ineligibility for the week of February 2, again stating that Wettig did not actively search for employment that week. DEED assigned this determination of ineligibility Issue No. 38000790. DEED told Wettig that she would remain ineligible for benefits until she began an “active work search.”

Thereafter, Wettig began to search for work and applied for two positions—one at a liquor store and another at a bar. Wettig also called Andersen every week asking for work.

Wettig appealed both determinations of ineligibility, and the ULJ held a hearing on both on March 13, 2020. The ULJ determined in separate decisions that Wettig was not actively seeking suitable employment and was therefore ineligible for unemployment benefits. The ULJ affirmed these decisions after Wettig requested reconsideration.

Wettig appeals by certiorari.

DECISION

When reviewing a ULJ’s decision, we may affirm or remand the decision for further proceedings or we may reverse or modify a decision that prejudices the relator’s substantial rights because the decision is unconstitutional, exceeds the statutory authority or jurisdiction of the department, is based on unlawful procedure, is affected by other error of

law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(1)-(6) (2020).

Wettig challenges the ULJ's decisions that she was ineligible for benefits because she was not actively seeking suitable employment. Whether Wettig was seeking suitable employment is a question of fact. *See Semanko v. Dep't of Emp't Servs.*, 244 N.W.2d 663, 665 (Minn. 1976). "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. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008).

To be eligible for unemployment benefits, Wettig had to have been "actively seeking suitable employment." Minn. Stat. § 268.085, subd. 1(5) (2020). That phrase is defined by statute as

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. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not "actively seeking suitable employment."

Id., subd. 16(a) (2020). The statute also provides that, "[i]f reasonable prospects of suitable employment in the applicant's usual or customary occupation do not exist, the applicant must actively seek other suitable employment to be 'actively seeking suitable employment.'" *Id.*, subd. 16(c) (2020). This provision "applies to an applicant who is seasonally unemployed." *Id.*; *see also McNeilly v. Dep't of Emp. & Econ. Dev.*, 778

N.W.2d 707, 711 (Minn. App. 2010) (“Minn. Stat. § 268.085, subd. 16(c), is explicit—seasonal employees must actively seek employment to be eligible for unemployment benefits.”).

We address the ULJ’s two decisions separately.

Issue No. 37983448 (Week of January 26)

Wettig argues that the ULJ’s decision with respect to the week of January 26 should be reversed because she understood that she did not have to look for work “as long as [she] stated that the reason was a temporary layoff with a callback date.” At the hearing before the ULJ, Wettig testified that “no one ever told [her]” that she was supposed to immediately start looking for work. But DEED sent Wettig a copy of the information handbook that states that an applicant “must actively look for work even if [she has] a part-time job or expect[s] to return to a seasonal job.” And, on January 17, DEED mailed to Wettig a work search warning, advising that she was required to look for other work. Wettig was thus informed that, even though she would return to Andersen in a few months, she needed to search for work in the meantime to remain eligible for unemployment benefits.

The record supports the ULJ’s finding that Wettig was not actively seeking employment during the week of January 26. Wettig stated in DEED’s request for information that she did not contact any employers for work, did not talk to a job counselor, did not search for any businesses offering similar work, and did nothing else to seek work that week. At the hearing with the ULJ, Wettig confirmed that she did not seek work during that week. Because Wettig admittedly made no efforts to seek suitable employment during the week of January 26, 2020, the ULJ did not err by determining that Wettig was not

actively seeking suitable employment and was therefore not eligible for benefits during that time period. We therefore affirm the ULJ's decision in Issue No. 37983448.

Issue No. 38000790 (Week of February 2 Through the Hearing)

Wettig also challenges the ULJ's decision with respect to the second time period—February 2 through the date of the hearing, March 13, 2020. DEED, on the other hand, asserts that Wettig was ineligible for benefits for the first two weeks of that time period but that, with respect to the remainder of that time period, the matter should be remanded to the ULJ for additional fact-finding. Specifically, DEED asserts that, with respect to the period of February 16 through March 13, the ULJ did not properly develop the record before concluding that Wettig's efforts to find a job were not suitable for her labor market area.

With respect to the week of February 2, Wettig admitted at the hearing that she did not seek employment. The record therefore supports the ULJ's finding that Wettig was not actively seeking suitable employment during that week. With respect to the next week, beginning February 9, Wettig worked 40 hours at Andersen. Because Wettig worked full time that week, she made reasonable, diligent efforts to obtain suitable employment. The record therefore does not support the ULJ's finding that Wettig was not actively seeking work that week. Wettig, however, will not be eligible for unemployment benefits because she worked 40 hours that week. *See* Minn. Stat. § 268.085, subd. 2(6) (2020) (stating that an applicant is ineligible for benefits for any week in which the applicant performs 32 hours or more of work).

With respect to the remaining weeks in this period, the ULJ found that Wettig applied for a job at a liquor store the week of February 16 and that she applied for a second job as a waitress the week of February 23. The ULJ also found that she called Andersen weekly to check in but that she had not signed up with any temporary staffing agencies. The ULJ determined that Wettig was “not genuinely interested in finding temporary employment during her layoff from Andersen” and had not conducted an “active search for work.”

The ULJ came to this determination without making any findings of fact regarding what employment is suitable for Wettig, the relevant labor market area, and the conditions existing in the relevant labor market area. We have stated that the ULJ “must consider the relevant ‘labor market area’ based on surrounding circumstances” because “the labor market area may differ depending on the work experience and location of each applicant for benefits.” *Work Connection, Inc. v. Bui*, 749 N.W.2d 63, 69 (Minn. App. 2008), *review granted* (Minn. June 18, 2008) *and appeal dismissed* (Minn. July 6, 2009); *see also* Minn. Stat. § 268.085, subd. 16(a). As DEED asserts in its brief to this court, “Whether Wettig’s efforts in applying to two jobs during a four-week period meets the criteria for ‘actively seeking suitable employment’ depends in part on what was available in Wettig’s labor market area.”

In addition, the ULJ did not assist Wettig in developing the record to make these necessary findings. The record contains a post office box in Somerset, Wisconsin, as Wettig’s mailing address but no evidence of where Wettig lives and works. And the ULJ did not ask whether Wettig performed other job-search activities—like networking,

looking at job postings, or reaching out to local businesses to ask about job openings. A ULJ has a duty to assist parties to “ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2019).

Because the ULJ did not make adequate factual findings to determine whether Wettig was actively seeking employment from February 16 through March 13, and because the ULJ did not assist Wettig in developing the record necessary to make those findings, the ULJ’s determination with respect to those weeks is not supported by the record. We therefore affirm in part, reverse in part, and remand the ULJ’s determination in Issue No. 38000790 for additional fact-finding and redetermination of Wettig’s eligibility for unemployment benefits from February 16 through March 13.

Affirmed in part, reversed in part, and remanded.