

*This opinion is nonprecedential except as provided by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
A21-0545**

Robert M. Hall,
Relator,

vs.

Atrium Hospitality LP,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 20, 2021
Affirmed
Segal, Chief Judge**

Department of Employment and Economic Development
File No. 43526751

Robert M. Hall, Chanhassen, Minnesota (pro se relator)

Atrium Hospitality LP, Alpharetta, Georgia (respondent employer)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Relator challenges the decision of an unemployment-law judge (ULJ) dismissing his unemployment-benefits appeal after relator failed to appear for the appeal hearing.

Because we discern no abuse of discretion in the ULJ's finding that relator lacked good cause for failing to appear at the hearing, we affirm.

FACTS

On October 29, 2020, respondent Minnesota Department of Employment and Economic Development (DEED) mailed relator Robert Hall a letter stating that he had become ineligible for unemployment benefits and needed to repay \$2,960 in overpaid benefits. Hall appealed DEED's determination and submitted written evidence asserting that he was not overpaid benefits. He argued in his written submission that, because he did not begin receiving severance pay until October 2020, the September unemployment payments were proper and he should not be required to pay back the September benefit payments.

DEED's letter of ineligibility cited Minn. Stat. § 268.085, subd. 3b (2020), which states, in part, that applicants are not eligible to receive unemployment benefits if they are receiving separation, severance, or bonus payments. The start of the ineligibility period is not tied to the date payments are made by the employer, but is triggered as of the later date of either the employment separation or "the date the applicant *first becomes aware* that the employer will be making a payment."¹ Minn. Stat. § 268.085, subd. 3b(b) (emphasis added).

On November 5, DEED mailed the parties a notice scheduling a hearing in Hall's appeal for March 15, 2021. The notice of hearing stated that "[t]his hearing will be held

¹ From the written documents submitted by relator, it appears that agreement for payment of severance to relator was entered into in September 2020.

by telephone conference call,” and that the ULJ would call Hall to participate in the hearing. The notice included instructions for correcting the recipient’s telephone number, rescheduling the hearing, or requesting accommodations for the hearing. DEED also mailed a set of instructions along with the notice, which explained Hall’s “rights and responsibilities regarding the hearing.”² DEED later mailed a notice to the parties on November 20 rescheduling the appeal hearing to January 12, 2021.

The ULJ called Hall on January 12, 2021, at the time of his hearing and reached his voicemail, where the ULJ left a message. The ULJ then called Hall a second time at a different number and reached a different voicemail, where the ULJ did not leave a message. The next day, on January 13, 2021, the ULJ issued an order dismissing Hall’s appeal, stating that he was “considered to have failed to exhaust available administrative remedies” for failing to participate in the hearing.

Hall submitted a request for reconsideration on January 17, 2021. In his request, he explained that he failed to participate in the hearing because he “incorrectly thought that because [he] had submitted a letter with evidence for the hearing that [he] did not need to participate in the call.” On February 5, 2021, Hall submitted another written statement with four more reasons for missing the hearing. These included (1) that Hall had already submitted a letter and evidence, (2) that Hall was working on the day of the hearing, (3) that Hall thought “that it was not a requirement to attend the hearing,” and (4) that Hall’s

² DEED included in its addendum a copy of what it asserts was the hearing guide it mailed to Hall. But this guide was not included in the administrative record, and we do not rely on it.

“evidence will show that I do not owe the repayment amount.” Hall also stated that he had “tried multiple times to reach the Appeals Office at the telephone number listed” and had reached a recording every time. Finally, he noted that his hearing had been rescheduled “at least one time.”

The ULJ denied Hall’s reconsideration request on April 6, 2021, finding that Hall had not shown good cause for missing the hearing. In a memorandum accompanying the order, the ULJ explained that “[n]othing in the information provided, nor was Hall instructed, that a written document could stand in place of his attendance for the hearing.” The ULJ also stated that Hall “should have rescheduled” the hearing if needed, and that Hall “has not shown that he acted with due diligence to participate in the hearing.” Hall now appeals this denial, arguing that the ULJ should have reviewed the written evidence he submitted or else granted him a second hearing.

DECISION

Under Minn. Stat. § 268.105, subd. 1a(b) (2020), “[i]f the appealing party fails to participate in the hearing, the [ULJ] has the discretion to dismiss the appeal by summary decision.” The statute requires an appealing party to participate personally; “[s]ubmission of a written statement does not constitute participation.” Minn. Stat. § 268.105, subd. 1a(b). An appealing party who fails to participate may request reconsideration of the ULJ’s decision to dismiss their appeal. *Id.*, subd. 2 (2020). The ULJ must grant reconsideration and order an additional hearing “if the party who failed to participate had good cause for failing to do so.” *Id.*, subd. 2(d). This court may reverse a ULJ’s decision on reconsideration “if the substantial rights of [relator] may have been prejudiced” due to

an error of law, a lack of substantial evidence, or other enumerated reasons. *Id.*, subd. 7(d) (2020). However, “[t]his court will not reverse a ULJ’s decision to deny an additional evidentiary hearing to a relator who missed the evidentiary hearing unless the decision constitutes an abuse of discretion.” *Petracek v. Univ. of Minn.*, 780 N.W.2d 927, 929 (Minn. App. 2010).

Here, the ULJ reviewed Hall’s request for reconsideration and determined that he had failed to show good cause for failing to participate. “Good cause,” in this context, means “a reason that would have prevented a reasonable person acting with due diligence from participating in the hearing.” Minn. Stat. § 268.105, subd. 2(d). In support of his request for reconsideration, Hall stated that he did not know that he was required to attend the hearing and was working at the time. The ULJ found that this was not good cause. The ULJ found that “nothing in the information provided, nor was Hall instructed, that a written document could stand in place of his attendance for the hearing.” The ULJ also reasoned that Hall did not try to reschedule the hearing and thus did not show that he “acted with due diligence to participate.”

We discern no abuse of discretion in the ULJ’s decision. This court has held that similar decisions by ULJs were not an abuse of discretion. In *Skarhus v. Davanni’s Inc.*, this court affirmed a ULJ’s decision that a party who missed a hearing because of a work conflict had not shown good cause. 721 N.W.2d 340, 345 (Minn. App. 2006). We noted that the party who failed to participate “neither attempted to reschedule the hearing nor demonstrated that a request for time off work to attend the hearing was denied.” *Id.* Similarly, in *Petracek*, this court upheld a ULJ’s determination that a party being in jail

was not per se good cause for missing a hearing, noting again that the individual made no attempt to reschedule the hearing. 780 N.W.2d at 929-30. Both cases reflect that “good cause” requires something more than a showing of mere unavailability, such as attempts to participate or attempts to reschedule.

Hall argues on appeal that “there are many reasons why a reasonable person can miss a phone call.” He reiterates that he was unavailable due to work, and also alleges for the first time on appeal that “the phone call was blocked due to an anti-spam feature on his Apple iPhone.” But as *Skarhus* and *Petracek* make clear, mere unavailability is not the same as good cause, absent some additional showing of attempts to participate or reschedule. Although Hall asserts that it was difficult to call DEED due to the high volume of calls during the pandemic, he does not claim that he ever tried to reschedule the hearing or that he tried to respond to the missed calls from the ULJ. And we may not consider the “anti-spam feature” argument, as our review of the ULJ’s decision is limited to the record that was before the ULJ.³ See *Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 390 (Minn. App. 2015) (declining to consider reasons for failure to participate that were not provided to the ULJ). On this record, we discern no abuse of discretion by the ULJ in determining that Hall did not show good cause for failing to participate.

³ Even if this court were to consider the anti-spam feature argument, it still would not necessarily constitute good cause. Cf. *Wilson v. Rebar*, No. A16-0930, 2016 WL 7438848, at *2 (Minn. App. Dec. 27, 2016) (affirming ULJ’s decision that technical issues with a party’s phone were not good cause for missing a hearing); *Mohamed v. Indus. Staffing*, No. A09-944, 2010 WL 607664, at *2 (Minn. App. Feb. 23, 2010) (affirming ULJ’s decision that a party’s bad cell signal was not good cause for missing a hearing).

Hall also argues that the ULJ should have considered the written evidence that he submitted, rather than dismissing the appeal solely based on the missed phone call. But Minn. Stat. § 268.105, subd. 1a(b), gives the ULJ the discretion to dismiss an appeal if the appealing party fails to participate. “Submission of a written statement does not constitute participation.” Minn. Stat. § 268.105, subd. 1a(b). Hall also conceded in his reconsideration request to the ULJ that his participation was required. Without a showing of good cause as described above, there is no statutory requirement that the ULJ grant Hall a new hearing, and there was no abuse of discretion by the ULJ in declining to do so.

Finally, Hall makes substantive arguments regarding his eligibility for unemployment benefits. Those arguments, however, are beyond the scope of this appeal. This court is limited to reviewing the ULJ’s decision on reconsideration, which here focused solely on Hall’s failure to participate in the hearing. *See* Minn. Stat. § 268.105, subd. 7(a) (2020) (providing that this court reviews “the [ULJ’s] decision on reconsideration”); *see also Eley v. Southshore Invs., Inc.*, 845 N.W.2d 216, 222 (Minn. App. 2014) (declining to “consider the merits of DEED’s ineligibility determination” in appeal over good cause for failure to participate). Because the ULJ did not address Hall’s substantive arguments—and was not required to do so after Hall’s failure to participate—we do not address those issues here.

Affirmed.