

*This opinion is nonprecedential except as provided by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
A21-0914**

Melissa Ann Law,
Relator,

vs.

Pioneer Metal Finishing,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 11, 2022
Affirmed
Bryan, Judge**

Department of Employment and Economic Development
File No. 45316352-3

Melissa Ann Law, Robbinsdale, Minnesota (pro se relator)

Pioneer Metal Finishing, Minneapolis, Minnesota (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 Jesson, Presiding Judge; Bryan, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

Relator challenges the order of an unemployment-law judge (ULJ) dismissing relator's appeal of an initial determination of ineligibility after relator failed to appear. We conclude that because relator failed to show good cause for failing to participate in the evidentiary hearing, the ULJ did not abuse its discretion when it dismissed relator's appeal.

FACTS

Respondent Pioneer Metal Finishing hired relator Melissa Ann Law in June 2019. In January 2021, Pioneer Metal Finishing discharged Law. Law applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility, concluding that Law was ineligible for unemployment benefits because she was discharged for employment misconduct. Law appealed DEED's determination and an evidentiary hearing was scheduled for May 5, 2021, to address the merits of Law's appeal. Law received notice of this hearing and was informed that the "hearing will be held by telephone conference call." The notice instructed Law that if the listed phone number for her was incorrect, she was responsible to log onto an online account and make the necessary changes.

At the hearing, the ULJ attempted to contact Law by calling the listed phone number, but there was no answer. Unable to contact Law, the ULJ canceled the hearing and dismissed Law's appeal. Law requested reconsideration stating that she "forgot to update [her] phone number," and referencing a "financial issue in keeping [her] phone on." After reviewing the request for reconsideration, the ULJ concluded that Law had not shown

good cause for failing to participate and affirmed the dismissal. Law then initiated this certiorari appeal.

DECISION

Law argues that the ULJ erred in determining that she had not shown good cause for failing to participate in the evidentiary hearing. We conclude that because Law did not show good cause for failing to participate, dismissal was not an abuse of discretion.

Under Minnesota law, an applicant may appeal a determination of ineligibility for unemployment benefits and proceed to an evidentiary hearing with a ULJ. Minn. Stat. § 268.105, subd. 1(a) (2020). The applicant is required to personally participate in the evidentiary hearing and neither appearance by a representative nor submission of a written statement constitutes participation. Minn. Stat. § 268.105, subd. 1a(b) (2020). “If the party who filed the request for reconsideration failed to participate in the hearing, the unemployment law judge must issue an order setting aside [a] decision [dismissing the appeal] and ordering an additional hearing if the party who failed to participate had good cause for failing to do so.” Minn. Stat. § 268.105, subd. 2(d) (2020). “Good cause” is defined as “a reason that would have prevented a reasonable person acting with due diligence from participating in the hearing.” *Id.* We review the decision to deny an additional evidentiary hearing to a relator who failed to participate for an abuse of discretion. *Petracek v. Univ. of Minn.*, 780 N.W.2d 927, 929 (Minn. App. 2010).

In her request for reconsideration, Law stated that she forgot to update her phone number. The ULJ found that this was not “good cause” for failing to personally participate in the hearing because “[e]ven if true, Law could have called the Department on the day of

the hearing at the time of the hearing. She did not do so.” Law also asserts that her lack of income resulted in her being unable “to keep that phone on.”

We conclude that it was not an abuse of discretion for the ULJ to determine that Law’s explanation did not amount to good cause. The notice of hearing that was sent to Law stated that the “hearing will be held by telephone conference call,” and if the listed phone number was incorrect, to log onto an online account to make any changes. A reasonable person acting with due diligence would have updated the phone number or made some effort to call in to the hearing. *Petracek*, 780 N.W.2d at 930 (concluding that being in jail, without an attempt to reschedule the hearing or further explanation of the circumstances of the incarceration, did not constitute good cause for failing to participate); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (affirming denial of reconsideration request when relator failed to participate in the evidentiary hearing because of work, did not assert that she had been denied leave from work to attend the hearing, and made no attempt to reschedule the hearing).¹ Given this standard for showing good cause, we can discern no abuse of discretion in the ULJ’s determination.

Affirmed.

¹ We also observe that we have issued two nonprecedential opinions affirming denials of reconsideration where the applicant failed to participate because of a problem with phone service. See *Appolon v. Mentor Management, Inc.*, No. A17-1951, 2018 WL 4855407, at *2 (Minn. App. Oct. 8, 2018) (finding that a malfunctioning phone did not constitute “good cause” for failing to participate); *Mohamed v. Indus. Staffing*, No. A09-944, 2010 WL 607664, at *2 (Minn. App. Feb. 23, 2010) (finding that a lack of cell phone service did not constitute good cause). While these opinions are nonprecedential, we recognize their persuasive value. See Minn. R. Civ. App. P. 136.01, subd. 1(c).