

*This opinion is nonprecedential except as provided by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
A21-1030**

Charles Williams,
Relator,

vs.

Schmitt & Sons School Buses, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 18, 2022
Affirmed
Jesson, Judge**

Department of Employment and Economic Development

Charles Williams, Apple Valley, Minnesota (pro se relator)

Schmitt & Sons School Buses, Inc., Lakeville, 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 Bryan, Presiding Judge; Jesson, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Relator Charles Williams's doctor reported that Williams was temporarily unable to do any type of work due to his knee problems. Williams challenges the determination

of the unemployment-law judge (ULJ) that he was ineligible for benefits during the time he was unable to work, arguing that the ULJ erred by finding that he was unavailable for and did not actively seek suitable employment. We affirm.

FACTS

Williams worked as a bus driver for Schmitt & Sons School Buses, Inc. The company laid Williams off because of work shortages during the COVID-19 pandemic. Williams applied for and began receiving unemployment benefits in April 2020. But due to arthritis in Williams's knee, Williams's doctor stated that Williams was "totally unable to perform any type of work" from October 2, 2020 to January 31, 2021.

At an evidentiary hearing on Williams's appeal from an initial determination of ineligibility, Williams testified that he agreed with his doctor's assessment that he could not work. He stated that, while medically restricted from work, he did not look for other types of employment because of his doctor's directions. He also explained his concern about the pandemic given that he was a 67-year-old man with hypertension caring for his girlfriend while she underwent cancer treatments. Williams submitted no evidence at the hearing suggesting that he could work.

In Williams's weekly requests for unemployment benefits, he stated that he could not work due to his knee issues. He stated that he hoped to return to work at Schmitt & Sons when his knee healed, that he might look for work-from-home employment, and that he planned to search on the internet for a job. But he did not list any steps taken to look for other employment.

The ULJ found that Williams was (1) unavailable for suitable employment from October 1, 2020 to January 31, 2021 because of his medical restriction and (2) not actively seeking suitable employment during that time. The ULJ therefore determined that he was ineligible for unemployment benefits for that period, resulting in an overpayment. Williams requested reconsideration, and the ULJ affirmed the decision. Williams appeals by a writ of certiorari.

DECISION

To be eligible for unemployment benefits, a person must be “available for” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4), (5) (2020). A person is “available for suitable employment” if the person “is ready, willing, and able to accept suitable employment.” *Id.*, subd. 15(a) (2020). And a person is “actively seeking suitable employment” if the person makes “reasonable, diligent efforts [that] an individual in similar circumstances would make if genuinely interested in obtaining suitable employment.” *Id.*, subd. 16(a) (2020). “Suitable employment” is “employment in the applicant’s labor market area that is reasonably related to the applicant’s qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2020).

Whether an applicant is available for and actively seeking suitable employment is a question of fact. *See Semanko v. Dep’t of Emp. Serv.*, 244 N.W.2d 663, 665 (Minn. 1976) (stating that “the question of availability for work must be determined anew on the facts of each case”). We review a ULJ’s findings of fact in the light most favorable to the ULJ’s decision and “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), *rev. denied* (Minn. Oct. 1, 2008). Ultimately, we may reverse or modify a ULJ's decision if it reflects an error of law and prejudices an applicant's rights. Minn. Stat. § 268.105, subd. 7(d)(4) (2020).

Here, the record shows that Williams was medically restricted from doing any type of work from October 2, 2020 to January 31, 2021. Williams agreed with that restriction. The record therefore substantially supports the ULJ's finding that Williams was not available for suitable employment. Minn. Stat. § 268.085, subd. 15 (2020). The record further shows that Williams did not seek other employment during the time in question. It therefore also substantially supports the ULJ's finding that Williams did not actively seek suitable employment. *Peterson*, 753 N.W.2d at 774. We discern no error in the ULJ's determination that Williams was not eligible for unemployment benefits.

Still, Williams makes three arguments to persuade us otherwise. He first argues that he provided respondent Minnesota Department of Employment and Economic Development (DEED) with the information it requested—namely, information regarding his medical condition—and that he is therefore entitled to benefits. But providing requested information does not render Williams eligible, especially where the information provided shows that Williams was not available for suitable employment and did not seek employment.

Williams next appears to assert that he remained employed at Schmitt & Sons during the time in question and that he was therefore available for suitable employment and did not need to look for work. But the record shows, contrary to Williams's argument,

that he was laid off, was on an involuntary leave of absence, and that he contemplated seeking other work.

Finally, Williams argues that he declined to look for work based on pandemic emergency orders recommending that at-risk persons stay home. *See* Emerg. Exec. Order No. 20-99, *Implementing a Four Week Dial back on Certain Activities to Slow the Spread of COVID-19*, at 4 (Nov. 18, 2020) (dial-back executive order); Emerg. Exec. Order No. 20-55, *Protecting the Rights and Health of At-Risk Populations during the COVID-19 Peacetime Emergency*, at 3 (May 13, 2020) (the at-risk-populations executive order). The dial-back executive order advised at-risk persons to stay home and follow the provisions of the at-risk-populations executive order. The at-risk populations executive order defined at-risk persons as including people 65 years old and older and those with underlying medical conditions and advised at-risk persons to stay home except to engage in necessary activities and work, to the extent that working from home was not possible. Additionally, another executive order closed many businesses at which Williams might have otherwise found work. Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation*, at 2 (Mar. 16, 2020).

Although the recommendations in these executive orders may have restricted the jobs safely available to Williams, they did not wholly foreclose work. Nor did they eliminate the requirement that Williams actively seek work in order to be eligible for benefits. And, as DEED points out, still another executive order clarified that the requirement that an applicant look for “suitable employment” did not require applicants to pursue jobs that would put their health and safety at risk. Emerg. Exec. Order No. 20-05,

Providing Immediate Relief to Employers and Unemployed Workers During the COVID-19 Peacetime Emergency, at 2 (Mar. 16, 2020). In sum, nothing in the executive orders relieved Williams of his obligation to seek “suitable employment,” that is, some type of work within existing statutory parameters, *see* Minn. Stat. § 268.035, subd. 23a(a), that also would not risk his health and safety. Williams’s reliance on pandemic executive orders is unavailing.

Affirmed.