

*This opinion is nonprecedential except as provided by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
A22-1651**

Theresa Stang,
Relator,

vs.

Ind. School District #047,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed July 17, 2023
Affirmed
Larson, Judge**

Department of Employment and Economic Development
File Nos. 48888837-2; 48767565

Theresa Stang, Sauk Rapids, Minnesota (self-represented relator)

Ind. School District #047, Sauk Rapids, Minnesota (respondent employer)

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

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Relator Theresa Stang challenges an unemployment-law judge's (ULJ) order, which found her ineligible to receive unemployment benefits because she was (1) not available to accept suitable employment and (2) not actively seeking suitable employment. We affirm.

FACTS

On September 7, 2021, relator began working for respondent Independent School District #047 (ISD #047). ISD #047 employed relator as a part-time cashier. Relator worked the breakfast and lunch shifts, Monday through Friday, for approximately 20 hours per week. Relator established an unemployment benefit account with respondent Department of Employment and Economic Development (DEED), effective November 7, 2021.

On February 9, 2022, relator's daughter began experiencing symptoms related to her mental health, which required additional attention from relator. Beginning March 1, 2022, ISD #047 approved relator for "intermittent leave" to care for her daughter. This meant relator could take time off work as needed, either paid or unpaid. On March 31, 2022, relator used her intermittent leave for the first time. From March 31 to May 27, 2022, relator used her intermittent leave to take time off work on roughly 28 days. Most of this time off was unpaid. Relator's intermittent leave ended on June 2, 2022, the last day of the school year. Relator requested and received unemployment benefits for weeks in April through June 2022.

In addition to her job at ISD #047, relator worked as a tax preparer and office manager with H&R Block during tax season.¹ In 2022, H&R Block offered relator work during the summer for the first time.² H&R Block asked relator to fill in if another employee needed time-off.

On June 8, 2022, DEED determined relator was ineligible for unemployment benefits on the basis that she was “on a voluntary leave of absence.”³ Relator appealed the ineligibility decision to a ULJ.

On July 6, 2022, the ULJ held an evidentiary hearing. The ULJ heard testimony from relator and ISD #047’s director of human resources (the HR director). Relator testified she still worked at ISD #047 during her intermittent leave and that she needed intermittent leave because she did not “have enough time in [her] bank to take off for appointments and such.” The HR director echoed this testimony, explaining that an employee can take intermittent leave “all in one chunk or . . . more sporadically.”

On July 27, 2022, the ULJ held a second evidentiary hearing, with relator and the HR director in attendance. The ULJ noted that in addition to the leave-of-absence issue, the hearing would address “whether [relator] ha[d] been available to accept suitable

¹ In 2014, relator began working at H&R Block annually from approximately January to mid-April.

² Relator had her first summer shift on July 6, 2022. Between July 6 and July 27, 2022, relator worked three shifts.

³ “An applicant on a voluntary leave of absence is ineligible for unemployment benefits for the duration of the leave of absence.” Minn. Stat. § 268.085, subd. 13a(a) (2022). “A leave of absence is a temporary stopping of work that has been approved by the employer.” *Id.*, subd. 13a(c) (2022). “A leave of absence is voluntary when work that the applicant can then perform is available with the applicant’s employer but the applicant chooses not to work.” *Id.*, subd. 13a(a).

employment and actively seeking suitable employment.” The hearing focused on clarifying what would constitute suitable employment for relator and discussing relator’s work with H&R Block. Regarding suitable employment, relator testified that she lived in Sauk Rapids, Minnesota, and indicated she was willing to drive 30 minutes for work. Relator also testified she held an associate degree and that she had previously held positions as a cashier, stocker, and head gardener. And with respect to actions taken to seek suitable employment, relator testified that she had not looked for a new job since March 31, 2023, because she “still had [her] tax job [and] was working too.”

On August 1, 2022, the ULJ issued its findings of fact and decision, determining relator was ineligible for unemployment benefits. The ULJ found, “Suitable employment for [relator] includes full-time work as a cashier, tax preparer, office manager, and in lawn/garden care and other similar work within a 30-minute drive of Sauk Rapids.” The ULJ also determined that: (1) “[f]rom March 31, 2022, to June 2, 2022, [relator] was not on a leave of absence from ISD 047”; (2) “[f]rom March 31, 2022, up until [July 27, 2022] and until conditions change, [relator] was not available for suitable employment”; and (3) “[f]rom the week of April 17, 2022, up to [July 27, 2022] and until conditions change, [relator] was not actively seeking suitable employment.” The ULJ reasoned that relator was “not available for suitable employment” because:

Between March 31 and May 27, 2022, [relator] was unable to work for all or part of 28 days because she was caring for her daughter. After her work as a tax preparer/office manager ended in mid-April 2022, [relator] did not make herself available for full-time employment. [Relator] is choosing to not work during summer 2022 except to pick up shifts as-needed at H&R Block. Since March 31, 2022,

[relator] has not been ready, willing, and able to accept suitable employment.

The ULJ reasoned that relator was “not actively seeking suitable employment” because:

Since approximately the week of April 17, 2022, after her work as a tax preparer/office manager ended, [relator] did not look for any other full-time employment because she typically does not work in the summers. [Relator] has not made reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment.

Relator filed a request for reconsideration, attempting to introduce new evidence.⁴

On October 17, 2022, the ULJ affirmed its decision, noting that Minnesota law does not allow a ULJ to consider any evidence that was not submitted at the original hearings, except for purposes of determining whether to order an additional hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2022). In affirming its decision, the ULJ determined that, on reconsideration, relator had “not provided any information or arguments that require changing the decision or ordering another hearing.”

⁴ Relator tried to introduce, in part, the following evidence not mentioned in either evidentiary hearing:

When the week of April 17th came around and my hours dropped drastically from not working at H&R Block, but still working at ISD47 I did look onto the school’s website to see if any other positions were posted to get more hours. I have been consistently checking ISD47’s website for any available job openings that I am qualified to fulfill. . . . For a decision to be made stating I have not been actively seeking suitable employment is not true with the fact I have been trying since my hours had been reduced from the H&R Block job. The ISD47 job I have been actively trying to get a different position to get me more hours, but am only able to apply for those positions as they have come available.

Relator appeals.

DECISION

Relator challenges the ULJ's order, which found her ineligible to receive unemployment benefits because she was (1) not available to accept suitable employment and (2) not actively seeking suitable employment. To be eligible to receive unemployment benefits, an applicant must meet all the ongoing eligibility requirements in Minn. Stat. § 268.085, subd. 1 (2022). *See McNeilly v. Dep't of Emp. & Econ. Dev.*, 778 N.W.2d 707, 710-11 (Minn. App. 2010). Amongst other requirements, applicants must be “available for suitable employment” and “actively seeking suitable employment.” Minn. Stat. § 268.085, subd. 1(4)-(5).

Whether an applicant is available for and actively seeking suitable employment⁵ are questions of fact. *See Semanko v. Dep't of Emp. Servs.*, 244 N.W.2d 663, 665 (Minn. 1976) (availability); *McNeilly*, 778 N.W.2d at 711-12 (actively seeking). We review “a ULJ's findings of fact in a light most favorable to the decision, and will not disturb the findings so long as there is evidence in the record that substantially supports them.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 (Minn. App. 2018). We review de novo “the ULJ's interpretation of the unemployment statutes and . . . the ultimate

⁵ Relator does not contest the ULJ's findings regarding suitable employment. Broadly speaking, “[s]uitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications.” Minn. Stat. § 268.035, subd. 23a(a) (2022). “In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence is considered.” *Id.*

question [of] whether an applicant is eligible to receive unemployment benefits.” *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

I.

Relator disputes the ULJ’s determination that she was not available for suitable employment. The legislature defined “[a]vailable for suitable employment” to mean, “an applicant is *ready, willing, and able to accept suitable employment.*” Minn. Stat. § 268.085, subd. 15(a) (2022) (emphasis added). The legislature elaborated that an applicant’s “attachment to the work force must be genuine” and that “[a]n applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.” *Id.*

An applicant who is “absent from the labor market area for personal reasons, other than to search for work, is not ‘available for suitable employment.’” *Id.*, subd. 15(c) (2022). Additionally, an applicant “who has restrictions on the hours of the day or days of the week that the applicant can or will work, that are not normal for the applicant’s usual occupation or other suitable employment, is not ‘available for suitable employment.’” *Id.*, subd. 15(d) (2022).

Here the record and the law support the ULJ’s determination that relator was not available to accept suitable employment. The record substantially supports the ULJ’s findings that relator steadily reduced the hours she worked between March 31 and July 27, 2022. From March 31 to May 27, 2022, relator admitted she used her intermittent leave to take time off work on roughly 28 days and was unable to work on these dates because she

needed to care for her daughter. Thereafter, once tax season ended in April 2022,⁶ nothing in the record showed relator had the willingness or ability to seek full- or part-time employment, other than picking up shifts as needed at H&R Block. Thus, the record supports the ULJ's determination that relator's actions, or lack thereof, showed she was not "ready, willing, and able to accept suitable employment." *See* Minn. Stat. § 268.085, subd. 15(a).

That said, we have empathy for relator's situation; it is understandable that relator would choose to reduce her hours to care for her daughter. But unemployment eligibility "does not permit an applicant to forego employment . . . to accommodate her family's needs." *Dickens v. Metro. Council*, No. A14-0049, 2014 WL 4494381, at *2 (Minn. App. Sept. 15, 2014); *see also Walker-Seals v. Ind. Sch. Dist. No. 625*, No. A11-1554, 2012 WL 1658920, at *6 (Minn. App. May 14, 2012) (affirming ULJ's determination that applicant "was unavailable for suitable employment because she continued to care for her ill son").⁷ Therefore, the ULJ did not err when determining relator was not available to accept suitable employment.

⁶ From our review of the record, it is unclear how many hours relator worked per week at H&R Block from January to mid-April 2022. But if relator worked at least 32 hours per week, she was ineligible for benefits because she was not unemployed. *See* Minn. Stat. §§ 268.035, subd. 26 (defining unemployed to mean working less than 32 hours per week); .085, subd. 1(3) (requiring applicant to be unemployed during a particular week to be eligible for benefits). Relator, therefore, was not prejudiced by any ULJ error during weeks she worked at least 32 hours for H&R Block. *See* Minn. Stat. 268.105, subd. 7(d) (authorizing reversal only for prejudicial error by ULJ).

⁷ *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority except as law of the case, *res judicata* or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.").

II.

Relator disputes the ULJ's determination that she was not actively seeking suitable employment. The legislature defined "[a]ctively seeking suitable employment" to mean "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." Minn. Stat. § 268.085, subd. 16 (2022). "Limiting the search to positions that are not available is not actively seeking suitable employment." *McNeilly*, 778 N.W.2d at 711 (quotation omitted). Furthermore, "if reasonable prospects of suitable employment in the applicant's usual or customary occupation do not exist, the applicant must actively seek other suitable employment. This applies to an applicant who is seasonally unemployed." *Id.* (quotation omitted).

Here, the record and law support the ULJ's decision that relator was not actively seeking suitable employment. When asked if "since March 31 [she had] looked for a new job at all," relator responded that she had not looked for new employment because she continued to work at ISD #047 and H&R Block. Based on relator's later request for reconsideration, it is possible she misinterpreted the ULJ's question. But even granting this misinterpretation, when given the opportunity, relator failed to present any evidence at the evidentiary hearings that demonstrates she looked for new employment.

On appeal, relator asks this court to review the evidence she submitted with her request for reconsideration. But the ULJ declined to receive this additional evidence into the record and affirmed its decision based on the evidence submitted at the hearing. *See* Minn. Stat. § 268.105, subd. 2(c). Therefore, the additional evidence is not part of the

record on which we must base our review of the ULJ's determination. *See Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990) (“[E]vidence which was not received below may not be reviewed as part of the record on appeal.”). And even if we did review the additional evidence, relator's efforts to check the ISD #047 website for job postings is not sufficient to show she was actively seeking suitable employment. *See James v. Comm'r of Econ. Sec.*, 354 N.W.2d 840, 841-42 (Minn. App. 1984) (concluding that relator who, during a three-week period, made phone contact with four employers and visited the job-service office twice was not actively seeking suitable employment), *rev. denied* (Minn. Dec. 20, 1984); *see also In re Vue*, No. A22-0875, 2023 WL 3047979, at *2 (Minn. App. Apr. 24, 2023) (“Spending only six hours a week casually exploring potential employment online and sending inquiries to only three potential employers in over a month's period (while submitting job applications to none) is not actively seeking suitable employment”); *Flanagan v. Dep't of Emp. & Econ. Dev.*, No. A16-1400, 2017 WL 875273, at *3 (Minn. App. Mar. 6, 2017) (concluding applicant was not actively seeking suitable employment when they “only spent about two hours and fifteen minutes per week looking for work online and in newspapers”).

For these reasons, the ULJ did not err when determining relator was not actively seeking suitable employment.

Affirmed.