

*This opinion is nonprecedential except as provided by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
A23-1584**

In the Matter of: Suad Mohamoud.

**Filed August 5, 2024
Affirmed
Ede, Judge**

Department of Employment and Economic Development
File No. 49775360-3

Suad Mohamoud, St. Louis Park, Minnesota (pro se relator)

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

Considered and decided by Schmidt, Presiding Judge; Cochran, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this certiorari appeal, relator challenges the order of an unemployment law judge (ULJ) affirming the ULJ's prior decision that relator was ineligible for unemployment benefits from June through August 2023 because she was unavailable for suitable employment. Because we conclude that substantial evidence supports the ULJ's finding that relator was unavailable for suitable employment during the relevant period, we affirm.

FACTS

In mid-August 2022, relator Suad Mohamoud established an unemployment-benefits account. A few weeks later, Mohamoud began working as a front-desk assistant for a home healthcare service. In February 2023, Mohamoud slipped on ice and fell, suffering injuries to her right shoulder, neck, and back. Mohamoud was placed on work restrictions, which ultimately led to the end of her employment as a front-desk assistant in June 2023. Mohamoud later applied for unemployment benefits.

In July 2023, respondent Minnesota Department of Employment and Economic Development (DEED) sent Mohamoud a letter informing her that, beginning June 11, 2023, she was ineligible to receive unemployment benefits. DEED explained that its determination was based on Mohamoud's failure to "demonstrate[] an active search for gainful employment that exists or can be expected to arise within [Mohamoud's] labor market, consistent with [her] work restrictions." DEED also stated that it had not received medical documentation of Mohamoud's work restrictions and advised Mohamoud to contact DEED if she began "actively searching for existing employment that [was] consistent with [her] restrictions or qualifications."

Mohamoud appealed DEED's determination and appeared before a ULJ for a hearing in August 2023. At the hearing, Mohamoud testified in relevant part as follows.

Mohamoud was working full-time for the home healthcare service when she slipped and fell "on work property" in February 2023. Because of the fall, Mohamoud injured her right shoulder and upper back. According to her doctor's instructions after the accident, Mohamoud had to minimize her work hours. Mohamoud received physical therapy and

ongoing chiropractic care for her injuries. She remained employed until June 8, 2023, when her employer could no longer accommodate her work restrictions.

The front desk position required Mohamoud to answer phones and use a computer over the course of an eight-hour shift, which became difficult for Mohamoud because of her muscle strain and weakness. According to her physician, Mohamoud was restricted from lifting more than ten pounds and was limited to the following activities: occasional overhead reaching; occasional overhead lifting; occasional outward reaching and keyboarding; rare bending and twisting of the neck; and sitting no longer than three hours at a time. Mohamoud was also advised to take breaks to rest and stretch up to 15 minutes per hour and to work shifts no longer than six hours. Mohamoud filed a workers' compensation claim, but the resolution of that claim is not reflected in the record.

Mohamoud's work experience includes positions such as "office assistant, school parent liaison, hotel night auditor, and property management associate." Each of those roles required "frequent" sitting, as well as computer and phone use. After June 11, 2023, Mohamoud applied for cashier and home healthcare positions that required driving and light cleaning, but none of the employers she contacted could accommodate her work restrictions.

Following the August 2023 hearing, the ULJ issued findings of fact and a decision that, "[b]eginning June 11, 2023, continuing through the date of the hearing, and until conditions change, Suad Mohamoud has not been available for suitable employment" and "is not eligible for unemployment benefits beginning June 11, 2023, and continuing until

conditions change.” The ULJ reasoned that, after May 2023, suitable employment for Mohamoud included:

sedentary entry-level jobs of six hours per day with no lifting more than ten pounds, occasional overhead lifting, occasional outward reaching and keyboarding, rare bending and twisting of the neck, breaks to rest and stretch up to 15 minutes per hour, and no sitting longer than three hours at a time.

The ULJ found that all the jobs for which Mohamoud had applied were “outside her work restrictions” and that it was “unlikely that jobs [that] Mohamoud could safely perform within her medical restrictions actually exist within her labor market.” The ULJ determined that Mohamoud’s chronic upper back, neck, and right shoulder pain had created restrictions preventing her from being available for suitable employment.

Mohamoud requested reconsideration of the decision in September 2023. Her request attached, among other things, responses to job applications that Mohamoud had submitted to employers before the hearing. This included a response to Mohamoud’s application for a position as a burial vault installer, which stated that, “due to the restrictions placed on [her] file[,]” the employer could not accommodate Mohamoud’s employment. Other responses advised Mohamoud that employers were “looking for a full-time employee [who] is able to be at the office” and could not employ her because of her work restrictions.

The ULJ filed an order affirming the findings of fact and decision, determining that the request for reconsideration included screenshots of job applications and employer responses that predated the hearing but provided no reason why Mohamoud did not submit those documents at the time of the hearing. The ULJ also found that the request for

reconsideration provided job applications and letters from medical providers about work restrictions that postdated the hearing. The ULJ determined that Mohamoud had neither shown that the evidence presented at the hearing was false nor “provided any information or arguments that require changing the decision or ordering another hearing.”

Mohamoud petitioned this court for certiorari review.

DECISION

Mohamoud challenges the ULJ’s order affirming its decision that she was ineligible for unemployment benefits, arguing that the ULJ’s determination was “unsubstantiated” and not “based on facts.”¹ DEED responds that the record supports the ULJ’s finding that Mohamoud was unavailable for suitable employment from June through August 2023 because all the jobs for which she had applied were outside her work restrictions. We agree with DEED.

“The Minnesota Court of Appeals must, by writ of certiorari to the department, review the unemployment law judge’s decision on reconsideration” Minn. Stat.

¹ Without providing supporting argument or authorities, Mohamoud’s brief also suggests for the first time on appeal that the ULJ’s decision may have been racially biased. Because “[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it[,] . . . [n]or may a party obtain review by raising the same general issue litigated below but under a different theory,” we do not consider Mohamoud’s racial-bias argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). But even if we were to consider Mohamoud’s claim of racial bias, we note that “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Based on our inspection of the record, we discern no prejudicial error arising from racial bias because there is no evidence of such bias in this case.

§ 268.105, subd. 7(a) (2022). When reviewing the decision that an applicant is ineligible for unemployment benefits, appellate courts may affirm the ULJ's decision or remand it for further proceedings. *Id.*, subd. 7(d) (2022). This court may also reverse or modify the decision if the petitioner's substantial rights might have been prejudiced because the ULJ's "findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the hearing record as submitted." *Id.* "[Appellate courts] review the ULJ's findings of fact in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotations omitted).

To receive unemployment benefits, a party must file an application and establish a benefit account, and the applicant must meet the ongoing eligibility requirements under Minnesota Statutes section 268.085. Minn. Stat. § 268.069, subd. 1 (2022). One of the requirements to receive unemployment benefits for any week is that the applicant be available for suitable employment. Minn. Stat. § 268.085, subd. 1(4) (2022). "Available" for suitable employment means that the applicant is "ready, willing, and able to accept suitable employment." *Id.*, subd. 15(a) (2022). The applicant's attachment to the workforce must be genuine. *Id.*

"Suitable 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). Factors to consider when determining whether employment is suitable include "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." *Id.* But "primary consideration is given to the temporary or permanent nature of the applicant's separation from employment and whether the applicant has favorable prospects of finding employment in the applicant's usual or customary occupation at the applicant's past wage level within a reasonable period of time." *Id.*, subd. 23a(b) (2022).

Here, considering the record as submitted at the time of the August 2023 hearing in the light most favorable to the ULJ's decision, we conclude that substantial evidence supports the ULJ's determination that all the jobs for which Mohamoud had applied were "outside her work restrictions" and that it was "unlikely that jobs which Mohamoud could safely perform within her medical restrictions actually exist within her labor market area." More specifically, Mohamoud testified that her work experience includes positions such as "office assistant, school parent liaison, hotel night auditor, and property management associate." The hearing record established that each of those roles required "frequent" sitting, as well as computer and phone use. The record also revealed that, after her slip-and-fall injury, Mohamoud was limited to: occasional outward reaching and keyboarding; rare bending and twisting of the neck; and sitting no longer than three hours at a time. And Mohamoud testified that she was advised to work shifts no longer than six hours and to take breaks to rest and stretch up to 15 minutes per hour. Although the hearing evidence showed that, since June 11, 2023, Mohamoud applied to jobs in her labor market area that were reasonably related to her qualifications, Mohamoud acknowledged in her testimony that none of the prospective employers could accommodate her work restrictions. The record therefore supports the ULJ's ineligibility determination.

Despite the record evidence, Mohamoud maintains that she “diligently searched for any work opportunities” and “meticulously documented [her] activities[.]” But the ULJ received only seven exhibits at the hearing, all of which DEED submitted, and none of which support Mohamoud’s position on appeal. It was not until *after* the ULJ hearing, when she filed her request for reconsideration, that Mohamoud submitted documentation of her job-search efforts, including employment applications, employer responses, and an updated workability report.

In that connection, “reconsideration is the procedure for [a ULJ] to correct any factual or legal mistake in the decision, or to order an additional hearing when appropriate[.]” Minn. Stat. § 268.105, subd. 2(b)(1) (2022). And when reviewing a request for reconsideration, a ULJ “must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing.” *Id.*, subd. 2(c) (2022). Only two circumstances require a ULJ to order an additional hearing: (1) “if a party shows that evidence which was not submitted at the hearing . . . would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence;” or (2) “if a party shows that evidence which was not submitted at the hearing . . . would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.” *Id.*

Based on our review of the record, we conclude that substantial evidence supports the ULJ’s determination that Mohamoud’s request for reconsideration relied on evidence that was not submitted at the hearing and that Mohamoud has not shown the existence of

either circumstance that would require the ULJ to order an additional hearing.² In particular, the evidence that Mohamoud provided with her request for reconsideration would not likely change the outcome of the ULJ's decision, there was no showing of good cause for Mohamoud's failure to submit that evidence at the hearing, and Mohamoud's additional submissions did not show that the hearing evidence was likely false.

Instead, the record reflects that the employer responses that Mohamoud submitted with her reconsideration request confirmed that she had applied for positions that could not accommodate her work restrictions and underscored the unlikelihood of Mohamoud finding suitable employment in her current labor market given those restrictions. The request for reconsideration also neglected to present good cause for Mohamoud not having previously submitted the documents on which she relied. And Mohamoud made no showing that the evidence submitted at the hearing was likely false. We note that Mohamoud's own testimony comprised most of the hearing evidence, complemented by exhibits that included her responses to DEED's requests for information and a medical statement detailing her work restrictions, which she authenticated at the hearing.

² We note that “[a] reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). Because the ULJ properly applied the law in exercising its discretion within the statutory requirements to deny Mohamoud an additional hearing, we discern no abuse of discretion here. *See Vasseei v. Schmitt & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010) (citing *Skarhus*, 721 N.W.2d at 345, for its statement of the abuse-of-discretion standard of review and observing that “the ULJ’s discretion is not absolute” and “must be exercised within the statutory requirements” without “improperly applying the law” (other citations omitted)).

In sum, we conclude that Mohamoud's substantial rights were not prejudiced by the ULJ's order affirming its findings of fact and decision because substantial evidence in the hearing record supports the ULJ's determination. *See* Minn. Stat. § 268.105, subd. 7(d). And because the record evidence reasonably tends to support the ULJ's factual findings that Mohamoud was unavailable for suitable employment from June 11, 2023, through the August 2023 hearing, we will not disturb those findings. *See Wilson*, 888 N.W.2d at 460.

Affirmed.