

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1431**

Dennis Leinen,
Relator,

vs.

Hiawatha Reddy Rents, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 14, 2018
Remanded
Reyes, Judge
Dissenting, Jesson, Judge**

Department of Employment and Economic Development
File No. 25561482-3

Dennis Leinen, St. Paul, Minnesota (pro se relator)

Hiawatha Reddy Rents, Inc., Minneapolis, Minnesota (respondent employer)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul,
Minnesota (for respondent department)

Considered and decided by Reyes, Presiding Judge; Halbrooks, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this unemployment-benefits appeal, relator Dennis Leinen challenges several orders by an unemployment-law judge (ULJ) dismissing as untimely relator's administrative appeals of ineligibility, overpayment, and fraud determinations. Respondent Minnesota Department of Employment and Economic Development (DEED) concedes that the administrative record is insufficient to support the ULJ's orders and requests that this court remand for further development of the record and reconsideration of the timeliness issue by the ULJ. Because a remand for further proceedings is authorized by statute and DEED has provided a valid basis for that disposition, we remand the matter to the ULJ for a hearing and further development of the record on the issue of whether relator timely appealed the initial determinations of ineligibility, overpayment, and fraud.

FACTS

On January 18, 2009, an unemployment-benefits account was established in relator's name, and benefits were collected on that account. Relator denies applying for the account or collecting the benefits, attributing those actions instead to his sister. In 2010, DEED became aware that relator had income from employment during weeks that benefits were paid on relator's account. On June 24, 2010, DEED issued initial determinations of ineligibility and fraud that resulted in overpayments and penalties totaling about \$3,145.60.

On March 20, 2017, relator filed administrative appeals from the June 24, 2010 ineligibility and fraud determinations. On April 20, 2017, the ULJ dismissed the appeals because they were not taken within 20 days of when the determinations of ineligibility were

sent. Relator filed requests for reconsideration, asserting that he did not receive the initial determinations of ineligibility, which were mailed to his sister's address when he no longer resided there.

On August 14 and 15, 2017, the ULJ filed orders denying reconsideration. The ULJ found that (1) relator had initiated an identify-theft investigation with DEED in January 2011; (2) in September 2012, a special agent with the Bureau of Criminal Apprehension (BCA) issued an investigative report finding that relator used his unemployment benefits to pay rent; (3) in May 2013 and February 2015, relator again contacted DEED regarding his claim of identity theft; and (4) on March 19, 2015, relator called DEED's customer-service center to say he would be filing a late appeal. The ULJ thus found that "even though [relator] likely did not receive any of the determinations of ineligibility in the mail, Department records show that [relator] received actual notice of the determinations much earlier than March 20, 2017, when he filed his appeal." In making these findings, the ULJ apparently relied on DEED's electronic records, but did not include those records in the administrative record.

Relator filed this certiorari appeal on September 13, 2017, and his brief on November 2, 2017. On December 4, 2017, DEED filed a letter in lieu of a respondent's brief, arguing that the matter should be remanded for further consideration and development of an evidentiary record on the issue of the timeliness of relator's administrative appeals. DEED asserts that the ULJ did not include in the record any of the information that she reviewed in reaching her decision and that DEED thus "can point to

nothing, other than the [orders themselves]” to provide support for the ULJ’s decision to dismiss the administrative appeals.¹

D E C I S I O N

Generally, a determination of ineligibility is final unless administratively appealed within 20 days of the date it is sent. Minn. Stat. § 268.101, subd. 2(f) (Supp. 2017). But in *Godbout v. Dept. of Emp’t & Econ. Dev.*, this court addressed circumstances in which the subject of a fraud determination no longer resided at the address to which DEED sent the ineligibility determination and had not been advised by DEED of the consequences of failing to maintain a current address with DEED for four years after receiving benefits. 827 N.W.2d 799, 803 (Minn. App. 2013) (citing Minn. Stat. § 268.18, subd. 2(e) (providing that fraud overpayments may be recovered for up to four years after receipt of benefits)). Under those circumstances, this court held that due process requires that the 20-day appeal period run from the date that the subject of the fraud determination receives actual notice. *Id.* Under *Godbout*, which DEED agrees applies to this appeal, there is a factual issue as to when relator received actual notice of the initial determinations, and thus when the time for him to appeal those determinations expired.

¹ The record in a certiorari appeal is comprised of documents submitted to the agency or considered by the agency in reaching its decision. See Minn. R. Civ. App. P. 110.01, 115.04. Thus, the documents considered by the ULJ would be part of the administrative record for purposes of appeal. But the administrative record submitted by DEED does not include the records considered by the ULJ, nor has DEED sought to supplement the appellate record. Counsel for DEED states that the ULJ who issued the orders is on leave, and declines to speculate what records the ULJ had considered in issuing the orders.

In reviewing an unemployment-benefits decision, this court is authorized to remand the case for further proceedings, or it may reverse the decision if the substantial rights of the relator may have been prejudiced because the findings are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017). We have typically remanded for additional development of the record or factual findings when the record or decision are insufficient to facilitate judicial review. *See White v. Univ. of Minn. Physician's Corp.*, 785 N.W.2d 351, 357 (remanding for additional development of the record on issue impacting eligibility); *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007) (remanding for additional findings on credibility); *see also State ex rel. Haak v. Bd. of Educ. of Indep. Sch. Dist. No. 625, St. Paul*, 367 N.W.2d 461, 466-67 (Minn. 1985) (remanding for further development of record on dispositive issues in administrative appeal).

DEED persuasively asserts that the record in this case was not sufficiently developed to facilitate judicial review. The only documents included as exhibits in the administrative record submitted to this court are the initial determinations themselves, relator's appeals, and relator's employer's report of weekly wages earned by relator. There is no evidence in the record that relator initiated an identity-theft investigation with DEED in 2011 and subsequently contacted DEED regarding the alleged identity theft and about filing an appeal. Thus, there is no evidentiary support for the ULJ's finding that Leinen had actual notice of the initial determinations more than 20 days before he submitted his administrative appeals.

We are cognizant that Minn. Stat. § 268.105, subd 7(d), authorizes this court to reverse a ULJ's decision if the findings are not supported by substantial evidence. And we agree with the dissent that ULJs should be vigilant in developing administrative records adequate to support judicial review. In this case, however, the ULJ's decision suggests that she was relying on evidence that, had it properly been included in the record, would support her decision to dismiss relators' appeals as untimely. Under these circumstances, we agree with DEED that it is appropriate to remand the matter to the ULJ for a hearing and further development of the record, and redetermination of the issue of whether relator timely filed administrative appeals of the initial determinations of ineligibility, overpayment, and fraud.

Remanded.

JESSON, Judge (dissenting)

I respectfully dissent from the court's decision to remand this matter.

In requesting a remand, respondent Minnesota Department of Employment and Economic Development (DEED) seeks a second chance to substantiate findings that it concedes are presently unsupported by the administrative record. But this type of second chance is regularly denied to people seeking to establish their entitlement to unemployment benefits. Under Minnesota Statutes section 268.105, subdivision 2(c) (Supp. 2017), a ULJ is precluded from considering additional evidence on reconsideration unless a party demonstrates (1) good cause for failing to submit evidence at the hearing and that it would likely change the outcome, or (2) that evidence at the hearing was likely false and had an impact on the hearing. Based on this requirement, this court has regularly denied requests by unemployment-benefits applicants for remands for consideration of additional evidence. *See, e.g., Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 534 (Minn. App. 2007) (affirming ULJ's denial of additional evidentiary hearing). This court also has declined to consider evidence that was not presented to the ULJ by these often-unrepresented parties. *See, e.g., Brisson v. City of Hewitt*, 789 N.W.2d 694, 697 (Minn. App. 2010) (declining to consider argument based on evidence that was not presented to the ULJ).

In other contexts, our supreme court has held that the failure to support findings with evidence in the record requires reversal of administrative decision-making. *See, e.g., In re Livingood*, 594 N.W.2d 889, 891-92, 895 (Minn. 1999) (remanding for issuance of conditional-use permit where record did not support findings in decision denying permit). The supreme court has expressed a "reluctance to allow local boards an opportunity after

the fact to substantiate or justify earlier decisions” and admonished that “[g]overnmental bodies must take seriously their responsibility to develop and preserve a record that allows for meaningful review by appellate courts.” *Id.* at 894-95 (citation and alteration omitted).

We should not hold often unrepresented people seeking unemployment benefits to a higher standard than a government agency with expertise. Because I believe that it is fundamentally unfair to allow DEED a second chance that unemployment-benefits applicants are routinely denied, I would reverse the decision of the ULJ dismissing relator’s appeal. *See* Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017) (authorizing this court to reverse ULJ decisions that are unsupported by substantial evidence).