STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1496
A17-1497

Dale Decker,
Relator,

vs.

OM Shiv Shakti, Inc.,
Respondent (A17-1496),

Department of Employment and Economic Development,
Respondent.

Filed May 14, 2018
Affirmed as modified
Peterson, Judge

Department of Employment and Economic Development
File Nos. 35378946-3, 35476137-3

Dale Decker, Edina, Minnesota (pro se relator)

OM Shiv Shakti, Inc., Eagan, Minnesota (respondent (A17-1496))

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

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

U N P U B L I S H E D   O P I N I O N

PETERSON, Judge

Relator challenges determinations by an unemployment-law judge (ULJ) that he committed fraud and was overpaid benefits. Relator argues that (1) the ULJ erred by finding that it was not credible that a department employee advised him that reporting his part-time income was optional, and (2) he should not be assessed a fraud penalty based on the misunderstanding. We affirm as modified.

FACTS

Relator Dale Decker applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) established a benefit account effective June 26, 2016, with a weekly benefit amount of $658. An information handbook is mailed to all applicants for unemployment benefits. In a section titled Report Work When Requesting Benefit Payments, the handbook states, "Each time you request a benefit payment, we ask if you worked during the week you are requesting. You must answer 'Yes' if you worked at all, including: . . . A part-time, or on-call job, even if you had it before you became unemployed from your main job." The handbook warns that failure to report earnings results in an overpayment that must be repaid and that failure to report "may be considered fraud," which is subject to a 40% penalty plus interest on the overpaid amount.

Decker submitted a claim for unemployment benefits for each week from June 26, 2016, through January 7, 2017. Each request-for-payment form asked: "Did you work or have a paid holiday during the reporting period listed above? This includes Full Time, Part

Time, Temporary Work, Self Employment or Volunteer Work." Each time, Decker answered "No." For the week from July 3, 2016, through July 9, 2016, and each week from July 17, 2016, through January 7, 2017, Decker received his full $658 weekly benefit.

During each week for which he received unemployment benefits, Decker was working part time as a shuttle driver at a hotel. In February 2017, DEED asked the hotel's owner, respondent OM Shiv Shakti, Inc., to provide information about the number of hours that Decker worked and his gross earnings. Based on the information provided, DEED made determinations that (1) Decker was overpaid benefits, and (2) he committed fraud by failing to accurately disclose his earnings and the number of hours worked. DEED assessed a fraud penalty against Decker.

Decker appealed both determinations to a ULJ, who conducted a hearing. Decker testified that he spoke to a DEED employee about his eligibility for benefits and his part-time employment. Decker testified that

> [the DEED employee] said, well, now you earned this much money in your account. And I remember basically . . . the conversation was $658 a week and that will be good for 26 weeks. Now, I, right or wrong, I thought she gave me the option to claim the part-time employment because she said if you do claim it . . . this will extend your benefits another 12 weeks or something like that she said.
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> . . . .
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> The amount will end up being the same I thought she said, it's just . . . how it's distributed. . . . I looked at the documents and I realized . . . whenever I sat in front of them I saw . . . did you work and how . . . they were billing . . . there's basically two questions that are kind of back to back.
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> . . . .

> One says, for this reporting period did you receive or apply income from any other source that you have not previously reported to us. I previously reported to it, thought I had the option to claim it, and that it would just be an extension of the benefits if I did. So, I proceeded on that basis. I realize now it looks like I wasn't answering unfactually, but it was based on what I thought I heard that day so, and so.
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> . . . .
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> . . . [B]ecause I had previously reported that I worked there. And I thought that she had given me the green light to, to, that my benefits would basically be the same it's just that they would be stretched out for a period of time versus . . . cutoff. But I didn't claim them beyond the 26-week period.

The ULJ found:

> Decker's testimony that he was told by a department employee he did not need to report part-time work is not credible. The weekly benefits request questionnaires plainly ask about all work, including part-time work. Decker worked each week in this period, and yet he reported no work whatsoever.

In separate decisions, the ULJ determined that Decker was overpaid $3,301 in unemployment benefits and assessed a fraud penalty of 40% of that amount. Decker requested reconsideration, and the ULJ affirmed both decisions.

Decker filed separate certiorari appeals challenging both decisions, and this court consolidated the appeals.

D E C I S I O N

This court may reverse or modify the ULJ's decisions if the decisions are unsupported by substantial record evidence or contrary to law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2016).

"[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). "Unemployment compensation determinations are inherently fact-based inquiries," and the "scope of review does not include appellate fact-finding." *Id.* at 462 n.13, 463 n.16. We defer to the ULJ's credibility determinations. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014), *review denied* (Minn. July 15, 2014). But "[q]uestions of law are reviewed de novo." *Builders Commonwealth, Inc. v. Dep't of Emp't & Econ. Dev.*, 814 N.W.2d 49, 56 (Minn. App. 2012).

Fraud

"An applicant may be eligible to receive unemployment benefits for any week if," in addition to other requirements, "the applicant was unemployed as defined in section 268.035, subdivision 26." Minn. Stat. § 268.085, subd. 1 (2016). "An applicant is considered 'unemployed' in any week that: (1) the applicant performs less than 32 hours of service in employment . . .; and (2) any earnings with respect to that week are less than the applicant's weekly unemployment benefit amount." Minn. Stat. § 268.035, subd. 26 (2016).

"An applicant has committed fraud if the applicant is overpaid unemployment benefits by: (1) knowingly misrepresenting, misstating, or failing to disclose any material fact; or (2) making a false statement or representation without a good faith belief as to the correctness of the statement or representation." Minn. Stat. § 268.18, subd. 2 (2016).

"After the discovery of facts indicating fraud, the commissioner must issue a determination of overpayment penalty assessing a penalty equal to 40 percent of the amount overpaid." *Id.*

Decker's argument that he did not commit fraud is based on his testimony about his conversation with a DEED employee. "When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2016). The ULJ discredited Decker's testimony because it was contrary to the questionnaires, which "ask about all work, including part-time work," and Decker even admitted that the questionnaires made his testimony seem untruthful. Also, the fact-finder is not required to believe uncontroverted testimony when "other circumstances in evidence discredit it." *Stuttgen v. Gipe*, 404 N.W.2d 10, 12 (Minn. App. 1987). In addition to being contrary to the questionnaires, Decker's testimony was contrary to the handbook, which explains that an applicant must report all work, including part-time work. The ULJ stated a valid reason for discrediting Decker's testimony, and substantial evidence supports the ULJ's determination that Decker committed fraud.

Overpayment

Decker seems to argue that his benefits should not have been reduced because the amount that he claimed was less than the total amount in his benefit account. But Minn. Stat. § 268.085, subd. 5(b) (2016), states:

> If the applicant has earnings, including holiday pay, with respect to any week, that is less than the applicant's weekly unemployment benefit amount, from employment,

> covered employment, noncovered employment, self-employment, or volunteer work, 50 percent of the earnings are deducted from the weekly unemployment benefit amount.

Under the plain statutory language, the ULJ properly deducted 50% of Decker's part-time earnings for the weeks during which he received unemployment benefits.

But the ULJ erred when calculating the amount of the overpayment. DEED acknowledges that 50% of Decker's earnings during the weeks that he received unemployment benefits is $2,731. We have reviewed the calculations of the ULJ and DEED, and DEED's calculation is correct. We, therefore, modify the overpayment amount to $2,731 and the fraud penalty to 40% of that amount.

Affirmed as modified.