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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0055**

In the Matter of: Donald Keefe.

**Filed October 28, 2019
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File Nos. 36706139-3, 36707519

Donald Keefe, Watkins, Minnesota (pro se relator)

Lossom Allen, Anne Froelich, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Smith,
John, Judge.*

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

BJORKMAN, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that his
unemployment benefits must be reduced because he received Social Security benefits. We
affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

FACTS

In August 2017, relator Donald Keefe established an unemployment-benefits account (2017 account) with the Minnesota Department of Employment and Economic Development (DEED). The following February, Keefe applied for and began receiving Social Security “old age” benefits. *See* Minn. Stat. § 268.085, subd. 4 (2018) (referring to “Social Security old age benefits”). He continued to apply for and receive unemployment benefits but did not report his Social Security old-age benefits to DEED until he established a new unemployment-benefits account in August 2018 (2018 account).

DEED subsequently determined that Keefe’s unemployment benefits for February 2018 through August 2018 should have been reduced to reflect his Social Security old-age benefits, and that he was overpaid \$3,244. DEED also determined that unemployment benefits under the 2018 account would be reduced because of Keefe’s Social Security old-age benefits.

Keefe appealed both determinations, noting that his unemployment benefits had been reduced in 2014 because he received Social Security benefits and “now 4 years later it’s happening again.” A ULJ conducted a *de novo* evidentiary hearing. Keefe testified that his 2014 unemployment benefits were reduced because he received Social Security survivor benefits. And then in 2018, his Social Security was “switched over” from survivor benefits to his own old-age benefits. The ULJ determined that Keefe’s unemployment benefits for February 2018 through August 2018 and under the 2018 account must be reduced, and that Keefe must repay the \$3,244 he was overpaid between February 2018

and August 2018. Keefe sought reconsideration, and the ULJ affirmed. Keefe appeals by writ of certiorari.

DECISION

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced because the decision was made upon unlawful procedure, affected by legal error, or unsupported by substantial evidence in view of the record as a whole. Minn. Stat. § 268.105, subd. 7(d) (2018). We view the ULJ's findings in the light most favorable to the decision and will not reverse if there is evidence that reasonably tends to sustain them. *Hasledalen v. Dep't of Emp't & Econ. Dev.*, 811 N.W.2d 133, 135 (Minn. App. 2012). But we review legal questions, such as interpretation of a statute, de novo. *Id.*

An applicant for unemployment benefits must report if he is receiving, has filed for, or intends to file for, Social Security "old age" benefits, because the receipt of such benefits may reduce the amount of unemployment benefits for which the applicant is eligible. Minn. Stat. § 268.085, subd. 4(a)-(c). There is no reduction if the applicant received the "old age" benefits throughout the entire period on which his unemployment benefits are calculated. *Id.*, subd. 4(a). But if he received the benefits for less than the entire period, "50 percent of the weekly equivalent of the primary Social Security old age benefit" must be deducted from his weekly unemployment benefit amount. *Id.*, subd. 4(b).

Keefe's 2017 unemployment-benefits account is calculated based on the period July 1, 2016, through June 30, 2017; his 2018 unemployment-benefits account is calculated based on the period July 1, 2017, through June 30, 2018. Keefe does not dispute that he did not receive Social Security old-age benefits throughout the entirety of either of these

base periods. Nor does he dispute that his unemployment benefits under both accounts are therefore subject to reduction for Social Security old-age benefits under Minn. Stat. § 268.085, subd. 4(b).

Rather, Keefe argues that his unemployment benefits were erroneously reduced in 2014 (when he received Social Security survivor benefits, not old-age benefits), and that the “improperly collected money” from 2014 should be credited against his 2018 overpayment. *See* Minn. Stat. § 268.085, subd. 4 (excepting Social Security survivor benefits from deduction). This argument is unavailing. Even if DEED erred in calculating Keefe’s 2014 unemployment benefits, DEED’s decision did not, as Keefe contends, “la[y] dormant,” but became final years ago. Minn. Stat. § 268.101, subd. 2(f) (2018) (providing that an unchallenged determination as to an applicant’s eligibility for benefits is final after 20 calendar days). And his 2018 unemployment benefits are not subject to modification on equitable grounds, such as to offset a prior error. *See* Minn. Stat. § 268.069, subd. 3 (2018) (providing that there is no equitable allowance of unemployment benefits); *see also Hasledalen*, 811 N.W.2d at 136 (declining to relieve relator of overpayment obligation because of unreported Social Security old-age benefits, even though failure to report may have been attributable to conflicting or inaccurate advice from government employees). Accordingly, the ULJ could not consider the validity of DEED’s 2014 reduction of Keefe’s unemployment benefits or otherwise account for that reduction in determining whether benefits available for February 2018 through August 2019 must be reduced because of Social Security old-age benefits.

In sum, the ULJ did not err by concluding that Keefe's unemployment benefits must be reduced to reflect his Social Security old-age benefits and that he must repay the \$3,244 he was overpaid between February 2018 and August 2018.

Affirmed.