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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0637**

Renee Vasko,
Relator,

vs.

Dominion Cares,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 25, 2019
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 36682997-5

Renee Vasko, Silver Lake, Minnesota (pro se relator)

Dominion Cares, Glencoe Minnesota (respondent)

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

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator Renee Vasko appeals from an order of an unemployment law judge (ULJ) affirming on reconsideration that relator received unemployment benefits through misrepresentation and is therefore subject to a mandatory misrepresentation penalty. Relator challenges the ULJ's determination that she committed misrepresentation when she failed to accurately report her hours worked, and she argues that the ULJ erred by refusing to consider evidence that relator submitted the day before the appeal hearing. We affirm.

FACTS

Relator established a benefit account with the Minnesota Department of Employment and Economic Development (DEED). At the time, relator worked part-time for Dominion Cares (Dominion) as a personal care attendant.¹

Relator received unemployment benefits from February 4, 2018, through April 28, 2018, while working for Dominion. On June 7, 2018, DEED audited relator's account and sent questionnaires to both relator and Dominion. Relator responded to the questionnaire, indicating that no corrections needed to be made to the hours that she had previously reported for the weeks in question. Relator also answered "no" to whether she received

¹ Relator had held two jobs—one of which was with Dominion. Relator was terminated from her other employment for reasons which are unclear based on the record before us. Relator continued to work for Dominion and was eligible for reduced benefits under Minn. Stat. § 268.085 (2018), which required accurate reporting of her hours worked and wages earned.

any other payment than what she reported between February 4, 2018, and June 9, 2018. Dominion also responded to the questionnaire, listing the hours that relator worked and the earnings for each of the weeks in question. Relator's and Dominion's reported hours matched for only one of the weeks in question.

DEED made two determinations: first, that relator's earnings while collecting unemployment benefits were greater than relator had reported, resulting in an overpayment of benefits (the overpayment issue), and second, that relator knowingly misrepresented her earnings and was subject to an overpayment penalty (the misrepresentation issue). Concerning the overpayment issue, DEED determined only that relator's reported earnings were incorrect, regardless of relator's motivation, leading to an overpayment of unemployment benefits. Concerning the misrepresentation issue, DEED determined that the overpayment resulted from relator having "intentionally misstated her hours and earnings." Relator was ordered to pay a mandatory penalty equal to 40 percent of the overpaid unemployment benefits.

Relator appealed both the overpayment issue and the misrepresentation issue, but the appeals were dismissed after relator failed to participate in the appeal hearing. Relator requested reconsideration of the dismissal and a new hearing was scheduled. The day before the rescheduled appeal hearing, relator sent exhibits to the ULJ.

At the hearing, the ULJ established that relator did not have copies of Dominion's exhibits because she had misplaced them, and that Dominion did not have copies of relator's exhibits because relator had sent them to the ULJ only one day earlier. The ULJ

did not admit either party's exhibits into evidence and stated that the ULJ would decide the case based on the testimony at the hearing.

During the hearing, relator maintained that she had accurately reported the number of hours that she worked and the dollar amounts she earned. Dominion's representative testified that relator worked the hours indicated on Dominion's timesheets, and that Dominion paid relator accordingly.

The ULJ found that relator was overpaid through misrepresentation, that she must repay the benefits, and that she must pay the mandatory penalty. The ULJ found that, when relator filed requests for benefits, relator knew "that she had worked the additional hours and that her earnings were higher than what she was reporting to [DEED]." The ULJ explained, concerning the misrepresentation issue, that:

[Relator] testified that she received a handbook from [DEED] when she initially applied for benefits, and that she was aware of the requirement that she report all work and earnings when requesting benefits. Asked whether there was any reason she was incapable of giving correct responses, she answered in the negative. Instead, she maintained that her original responses were correct and that [Dominion] and [DEED] got it wrong. But that was ruled out in the [overpayment issue] decision.

Relator requested reconsideration of the misrepresentation issue, but not the overpayment issue. The ULJ affirmed the earlier decision on the misrepresentation issue.

Relator appealed by certiorari, challenging the ULJ's decisions concerning both the overpayment issue and the misrepresentation issue.

DEED moved to dismiss the appeal in part, arguing that relator requested reconsideration only on the misrepresentation issue, and not on the overpayment issue. We issued an order limiting relator's appeal to the misrepresentation issue.

DECISION

Relator argues that the ULJ erred by finding that she committed misrepresentation when she failed to correctly report her hours.

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). Appellate courts apply a de novo standard when reviewing questions of law. *Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137, 142 (Minn. App. 2017).

Misrepresentation is committed where an "applicant is overpaid unemployment benefits by 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(a) (2018). "Whether a claimant knowingly and willfully misrepresented or misstated material facts to obtain benefits involves the credibility of the claimant's testimony which lies within the province of the [ULJ]." *Burnevik v. Dep't of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985).

The ULJ's determination that relator was overpaid unemployment benefits is final. Relator received benefits to which she was not entitled, because the ULJ found that her reported hours and earnings were inaccurate and relator did not request reconsideration of

that issue. The only question before us is whether relator made false statements or misrepresentations without a good faith belief concerning their correctness. The ULJ found misrepresentation and the record supports that determination.

In finding misrepresentation, the ULJ found relator not credible. The record supports the ULJ's finding that relator's argument that she did not misrepresent her hours of work relied solely on her argument that Dominion's records of her hours were incorrect. In resolving the overpayment issue, the ULJ found as a fact that Dominion's records of relator's hours were correct. And, as noted, that decision is final. Relator did not request reconsideration of the overpayment issue. Relator's present appeal is limited to challenging the misrepresentation finding, which is substantially supported by the record. Relator makes no argument that her incorrect reporting of hours and income resulted from inadvertence or some other good faith mistake. Her argument on appeal is limited to an attempt to relitigate the now-final overpayment issue.

The ULJ also concluded that a penalty must be assessed against relator. "After discovery of facts indicating misrepresentation, the [ULJ] must issue a determination of overpayment penalty assessing a penalty equal to 40 percent of the amount overpaid." Minn. Stat. § 268.18, subd. 2(a). Because the record supports the ULJ's finding that relator committed misrepresentation, relator is subject to the mandatory statutory penalty.

Finally, relator argues that she did not receive a fair hearing because the ULJ did not use the exhibits that relator faxed the day before the rescheduled appeal hearing. Even if relator is correct, she did not preserve this issue. The exhibits in question relate to whether there was an overpayment. As discussed, the overpayment issue is final and it

cannot now be reviewed. Relator, acting pro se, is held to the same rules and standards as an attorney. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Relator's failure to request reconsideration of the ULJ's decision on the overpayment issue may have been a mistake on relator's part. But that mistake cannot be a basis to appeal the final determination of the ULJ, and we dismissed relator's attempted appeal of the overpayment determination.

Affirmed.