

*This opinion is nonprecedential except as provided by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
A21-1331**

Sharon Powers-Potter,
Relator,

vs.

Data Recognition Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 16, 2022
Affirmed
Frisch, Judge**

Department of Employment and Economic Development
File No. 46994571-5

Sharon Powers-Potter, Champlin, Minnesota (pro se relator)

Data Recognition Corporation, Maple Grove, Minnesota (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Relator seeks reversal of the determination by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits. We affirm.

FACTS

The facts of this case are undisputed. In 2008, after the death of her husband, relator Sharon Powers-Potter began receiving Social Security survivor benefits. Starting in January 2018, Powers-Potter was seasonally employed as a test scorer by respondent Data Recognition Corporation (DRC). In 2020, due to the COVID-19 pandemic, DRC terminated Powers-Potter's employment. In January 2021, Powers-Potter elected to switch her Social Security benefits from survivor benefits to old-age retirement benefits.

On June 27, 2021, Powers-Potter established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). This account initially showed that Powers-Potter would receive weekly unemployment benefits of \$265. But in early July, DEED issued Powers-Potter a determination of ineligibility, concluding that her retirement benefits were deductible against her unemployment benefits and that this deduction exceeded her total benefits.

Powers-Potter appealed this determination to DEED. In late July, a ULJ held an evidentiary hearing. In early August, the ULJ determined that Powers-Potter's retirement benefits were deductible against her unemployment benefits, and that this deduction exceeded her total unemployment benefits. Therefore, the ULJ determined that Powers-Potter was ineligible to receive unemployment benefits.

Powers-Potter appeals by writ of certiorari.

DECISION

Powers-Potter argues for reversal of the ULJ's determination of ineligibility. Specifically, Powers-Potter argues that reversal is a fair and just result and that Governor Tim Walz's executive order suspending strict compliance with chapter 268, the unemployment-law chapter, renders her eligible for unemployment benefits. *See* Emerg. Exec. Ord. No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 16, 2020). DEED disagrees, arguing that the ULJ correctly applied the law by determining that she was ineligible for benefits and that the executive order "has no bearing on this case."

We may reverse or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the decision was affected by an error of law, was unsupported by substantial evidence, or was arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2020). "We review the ULJ's findings in the light most favorable to the decision and will not reverse if there is evidence in the record that reasonably tends to sustain them." *Hasledalen v. Dep't of Emp. & Econ. Dev.*, 811 N.W.2d 133, 135 (Minn. App. 2012) (quotation omitted). We review legal questions, such as the interpretation of a statute, de novo. *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 682 (Minn. 2012).

I. The ULJ correctly applied the law when it determined that Powers-Potter was ineligible for benefits.

Powers-Potter seeks reversal of the ULJ's determination that she is ineligible for unemployment benefits. Her entitlement to benefits is governed by Minn. Stat. § 268.085, subd. 4 (2020),¹ which provides, in part:

(a) If all of the applicant's wage credits [from the base period] were earned while the applicant was claiming Social Security old age [retirement] benefits, there is no deduction of the Social Security benefits from the applicant's weekly unemployment benefit amount.

(b) Unless paragraph (a) applies, 50 percent of the weekly equivalent of the primary Social Security old age [retirement] benefit the applicant has received . . . with respect to that week *must* be deducted from an applicant's weekly unemployment benefit amount.

(Emphasis added.)

This statutory scheme requires the following analysis: (1) does the applicant currently receive retirement benefits and, if so, (2) did the applicant receive retirement benefits during the base period. Minn. Stat. § 268.085, subd. 4(a)-(b). If the applicant currently receives retirement benefits but did not receive those benefits during the base period, the statute provides that the applicant's unemployment benefits "must" be reduced by 50% of the applicant's retirement benefits. *Id.*, subd. 4(b). We have previously stated that this statutory scheme creates "a bright-line rule." *Horan v. Dep't of Emp. & Econ.*

¹ Powers-Potter notes that the Minnesota Legislature decided to repeal subdivision 4 of Minnesota Statutes section 268.085. Even so, Powers-Potter acknowledges that the legislature's repeal of subdivision 4 does not take effect until July 3, 2022. 2021 Minn. Laws 1st Spec. Sess. ch. 10, art. 4, § 9, at 69. Thus, this repeal does not affect our analysis.

Dev., No. A16-0675, 2016 WL 7438717, at *2-3 (Minn. App. Dec. 27, 2016) (holding that the applicant’s unemployment benefits must be deducted by 50% of their retirement benefits when the applicant received Social Security *disability* benefits, not retirement benefits, during the base period).

Here, Powers-Potter received retirement benefits at the time of her unemployment-benefits application. She did not receive any retirement benefits during the base period of January 1 to December 31, 2020. Therefore, 50% of her retirement benefits “must” be deducted from her prospective unemployment benefits. Minn. Stat. § 268.085, subd. 4(b). Because 50% of her weekly retirement benefits (\$297.52) exceeded the total amount of her weekly unemployment benefits (\$265), the ULJ correctly determined that Powers-Potter was ineligible for unemployment benefits.

Powers-Potter argues that, notwithstanding the statute, it would be fair and just to render her eligible for unemployment benefits. But our review is limited to whether the ULJ committed an error of law, made findings unsupported by the evidence, or was arbitrary and capricious. We conclude that the ULJ’s findings are supported by the law and the facts of this case, and the decision was not arbitrary and capricious.

II. Powers-Potter’s substantial-compliance argument is forfeited.

Powers-Potter summarily argues that, because the governor’s executive order suspended strict compliance with chapter 268, the ULJ erred by finding her ineligible for unemployment benefits. *See* Emerg. Exec. Ord. No. 20-05.

We decline to address the merits of Powers-Potter’s argument because she failed to preserve the issue for appeal and adequately brief the issue. “Although some

accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). “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.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); see *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) (applying *Thiele* to a certiorari appeal). Appellate courts decline to reach issues that are inadequately briefed. *State Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); see *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (providing that inadequately briefed issues are not properly before an appellate court); *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987) (“While an appellant acting pro se is usually accorded some leeway in attempting to comply with court rules, [s]he is still not relieved of the burden of, at least, adequately communicating to the court what it is [s]he wants accomplished and by whom.”).

Here, Powers-Potter did not make her substantial-compliance argument to DEED or the ULJ in the underlying proceedings. Indeed, Powers-Potter admits that she was unaware of the executive order until after her hearing with the ULJ. Because she did not raise this issue in the underlying forums, we do not consider her argument on appeal.

In addition, Powers-Potter does not explain in her briefing how the application of the substantial-compliance standard would impact the determination of her eligibility for unemployment benefits. Instead, she summarily asserts that the suspension of strict compliance with chapter 268 allows her to receive benefits. But Powers-Potter does not

explain how we must, or even can, reach that result.² Because the issue is inadequately briefed, it is not properly before us, and we decline to consider it on the merits. *Wintz Parcel Drivers*, 558 N.W.2d at 480; *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.”).

Because the application of the substantial-compliance standard to the determination of eligibility was not raised below and is otherwise inadequately briefed, we decline to consider this argument.

Affirmed.

² We observe that the executive order suspending strict compliance with chapter 268 was terminated by the time that DEED determined Powers-Potter’s eligibility for benefits. *See* Emerg. Exec. Ord. No. 20-05 (suspending “strict compliance” with chapter 268 “until the peacetime emergency . . . is terminated”); 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 2, § 23, at 30 (terminating the peacetime emergency effective July 1, 2021). We also note that we have applied the substantial-compliance standard to the procedures or timelines to perfect unemployment claims, and we have not applied the substantial-compliance standard to the substantive determination of eligibility for unemployment benefits under the statute. *See In re Murack*, 957 N.W.2d 124, 130 (Minn. App. 2021) (applying the substantial-compliance standard to a party who failed to appeal within the 20-day administrative-appeal deadline for unemployment-benefits cases as required by Minn. Stat. § 268.101, subd. 2(f) (2020)); *see also In re Moose*, No. A21-0881, 2022 WL 433340, at *1-2 (Minn. App. Feb. 14, 2022) (same); *Iraad v. Amazon.com Servs. LLC*, No. A21-0100, 2021 WL 3027633, at *1-2 (Minn. App. July 19, 2021) (same).