This opinion is nonprecedential except as provided by Minn.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
A21-1421

In the Matter of:
Julie Heaver.

Filed July 18, 2022
Affirmed
Cochran, Judge

Department of Employment and Economic Development
File No. 45842101-6

Julie Heaver, Inver Grove Heights, Minnesota (pro se relator)

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

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that state law requires her state unemployment benefits to be reduced because she receives Social Security benefits. Relator also argues that she is entitled to federal pandemic-related benefits. Because the ULJ did not err, we affirm.

FACTS

Relator Julie Heaver was employed until March 2020, when her workplace closed because of the COVID-19 pandemic. After she stopped working, Heaver applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED) and established a benefit account effective March 15, 2020. The base period that DEED used to determine Heaver's weekly unemployment benefit amount was the fourth quarter of 2018 through the third quarter of 2019.[1] Heaver received a weekly benefit amount of $115 beginning March 15, 2020.

Heaver also received "Social Security old age benefits" beginning in January 2020.[2] From January through November 2020, she received monthly Social Security payments of $987. This translates to a weekly equivalent of $227.77. In December 2020, Heaver received an annual increase in her Social Security benefits and began receiving monthly payments of $1,000. This translates to a weekly equivalent of $230.77.

On April 20, 2021, a DEED administrative clerk issued a "determination of ineligibility" letter. The letter notified Heaver that state law requires that her unemployment benefits be reduced by 50% of her Social Security benefits. The determination letter stated that $115.38, or 50% of her weekly Social Security benefit amount as of December 2020, would be deducted from Heaver's weekly unemployment benefit amount. Because the amount deducted per week ($115.38) was greater than

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[1] An applicant's "base period" is "the most recent four completed calendar quarters before the effective date of an applicant's application for unemployment benefits." Minn. Stat. § 268.035, subd. 4(a) (2020). DEED determines the weekly unemployment benefit amount available based on an applicant's wages earned in covered employment during the base period. Minn. Stat. § 268.07, subd. 1(b) (2020).

[2] The unemployment-benefits eligibility statute, Minn. Stat. § 268.085, subd. 4 (2020), uses the term "Social Security old age benefits" to distinguish such benefits from "Social Security disability benefits." Because "Social Security old age benefits" are the only type of benefits at issue here, we hereafter use the term "Social Security benefits."

Heaver's weekly unemployment benefit amount ($115), Heaver was not eligible to receive any amount of state unemployment benefits.[3] The determination resulted in Heaver being charged with an overpayment of $575.

Heaver appealed the determination of ineligibility, and a ULJ conducted a de novo hearing in July 2021. After the hearing, the ULJ issued a written findings of fact and decision. The ULJ determined that Minn. Stat. § 268.085, subd. 4, requires DEED to deduct 50% of the weekly equivalent of Heaver's Social Security benefit amount, or $115.38 per week, from Heaver's weekly unemployment benefit amount of $115 per week. The ULJ concluded that "[t]his results in a weekly [unemployment] benefit of $0."

The ULJ also considered whether Heaver was eligible for federal pandemic-related benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The ULJ discussed two types of benefits provided under the CARES Act: federal pandemic unemployment compensation (FPUC) and pandemic unemployment assistance (PUA). The ULJ determined that Heaver was not eligible for FPUC benefits because FPUC benefits are available only "with respect to any week for which the individual is . . . otherwise entitled" to state unemployment benefits and "Heaver is not otherwise entitled

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[3] Before December 2020, when Heaver's monthly Social Security benefit amount was $987, 50% of the weekly equivalent of that amount was $113.88, which was lower than her weekly unemployment benefit amount ($115). As a result of the deduction, Heaver received a state unemployment benefit amount of only $1 or $2 per week. But because she received some amount of state unemployment benefits, she was eligible to receive federal pandemic unemployment compensation benefits—a $600 and later $300 weekly supplement to unemployment benefits that was provided by the federal government during certain weeks of the pandemic—in addition to the small amount of state unemployment benefits. *See* 15 U.S.C. § 9023(b)(3)(A) (2020) (providing for payment of benefits by the federal government in certain amounts for specified weeks).

under Minnesota law to receive [unemployment benefits] because of her receipt of Social Security benefits." The ULJ also reasoned that Heaver did not appear to be seeking PUA benefits.

Heaver requested reconsideration of the ULJ's decision. The request for reconsideration stated that Heaver believed she qualified for PUA payments. The ULJ affirmed the previous decision as factually and legally correct. The order also stated, "Eligibility for PUA will be addressed separately."

Heaver appeals by writ of certiorari.

DECISION

Heaver challenges the ULJ's decision. When reviewing a ULJ's decision, we may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2020). Alternatively, we may reverse or modify a ULJ's decision if the relator's substantial rights are prejudiced because, among other things, the decision is affected by an error of law. *Id.* When, as here, the facts are undisputed, we review de novo the interpretation of the unemployment-benefits statutes and the ultimate question of whether an applicant is eligible for unemployment benefits. *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

The ULJ's decision addressed three types of benefits—state unemployment benefits, FPUC benefits, and PUA benefits. We address each type of benefit in turn.

A. State Unemployment Benefits

The ULJ correctly applied Minn. Stat. § 268.085, subd. 4, to determine that Heaver was not entitled to state unemployment benefits due to the amount of Social Security benefits that she began receiving in December 2020.[4] The unemployment-benefits eligibility statute, Minn. Stat. § 268.085 (2020), requires that "50 percent of the weekly equivalent of the primary Social Security old age benefit the applicant has received . . . with respect to that week must be deducted from an applicant's weekly unemployment benefit amount." Minn. Stat. § 268.085, subd. 4(b).[5] The 50% deduction does not apply, however, "[i]f all of the applicant's wage credits were earned *while* the applicant was claiming Social Security old age benefits." *Id.*, subd. 4(a) (emphasis added).

Here, Heaver earned all her wage credits *before* she began receiving Social Security benefits. Because Heaver established a benefit account in March 2020, her base period was from the fourth quarter of 2018 through the third quarter of 2019, and she earned all her wage credits during that time. *See* Minn. Stat. § 268.035, subds. 4 (defining "base period" as the four most recent completed calendar quarters before the effective date of application for unemployment benefits), 27 (defining "wage credits" as the amount of wages paid within an applicant's base period) (2020). Heaver did not begin claiming Social Security benefits until January 2020. Thus, the 50% deduction set forth in Minn. Stat. § 268.085, subd. 4(b), applied to Heaver. And, starting in December 2020 (when Heaver

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[4] Although the increase in the amount of Heaver's Social Security benefits took effect in December 2020, the only time period at issue on appeal is after March 14, 2021, which is the effective date when Heaver's unemployment benefits were reduced to $0 because of the deduction.

[5] In 2021, the legislature repealed Minn. Stat. § 268.085, subd. 4, and the law becomes effective on July 3, 2022. *See* 2021 Minn. Laws 1st Spec. Sess. ch. 10, art. 4, § 9, at 69. Because the repeal of the statute does not apply retroactively, the 50% deduction provision applies to Heaver's situation. *See* Minn. Stat. § 645.21 (2020) ("No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.").

received an annual increase in her Social Security benefits), the amount of the deduction ($115.38) was greater than her weekly unemployment benefit amount ($115).[6] Therefore, the ULJ did not err by determining that Heaver's weekly unemployment benefit amount was reduced to $0 because of the increase in her Social Security benefits in December 2020.

B. FPUC Benefits

Heaver argues that the ULJ erred by determining that she was ineligible for FPUC benefits for periods after her unemployment benefit amount was reduced to $0. The CARES Act provided for the payment of FPUC benefits to eligible individuals in the amount of either $300 or $600 per week, based on the weeks of unemployment. 15 U.S.C. § 9023(b)(3)(A). FPUC payments were made "with respect to any week for which the individual is (disregarding this section) *otherwise entitled under the State law* to receive regular compensation." *Id.* (b)(1) (2020) (emphasis added). Under this provision, for an individual to be eligible for FPUC benefits, the individual must have been "otherwise entitled" to receive unemployment benefits under state law.

We agree with the ULJ that Heaver did not meet the eligibility requirements for FPUC benefits after her Social Security benefits increased in December 2020 because, after that point, she was not "otherwise entitled" to unemployment benefits under state law. As explained above, Heaver stopped receiving state unemployment benefit payments because

[6] From January to November 2020, 50% of the weekly equivalent of Heaver's Social Security benefits ($113.88) was just under her weekly unemployment benefit amount ($115).

of the deduction of 50% of the weekly equivalent of her Social Security benefits. Heaver contends that, even though her state unemployment benefit payments were reduced to $0, she still met the criteria for state unemployment benefits, and therefore should have been eligible for FPUC benefits. But eligibility for FPUC benefits was not tied to whether an applicant was "eligible" for state unemployment benefits, but rather whether an applicant was "otherwise entitled" to "regular compensation" under state law. *See id.* And, because Heaver did not actually receive any unemployment benefit payments during the relevant time period due to the deductions required by Minn. Stat. § 268.085, subd. 4(b), she was not "otherwise entitled" to "regular compensation" under state law. For this reason, the ULJ did not err by determining that Heaver was ineligible for FPUC benefits.

C. PUA Benefits

Finally, Heaver argues that she should have been eligible for PUA benefits. The CARES Act authorized PUA benefits for individuals who were "not eligible for regular compensation or extended benefits under State or Federal law" or certain types of pandemic-related benefits. 15 U.S.C. § 9021(a)(3)(A)(i) (2020). To be eligible for PUA benefits, the applicant was required to show that she was "otherwise able to work and available for work," but was unemployed because of one of several pandemic-related reasons. *Id.* (a)(3)(A)(ii)(I) (2020). Heaver argues that she met one of the enumerated exceptions.

DEED argues that the issue of Heaver's eligibility for PUA benefits is not properly before this court. We agree. This court generally does not consider issues that were not presented to and considered by the ULJ. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.

1988); *Peterson v. Ne. Bank—Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* in an unemployment-benefits appeal and declining to review an issue when DEED failed to raise the issue before the ULJ). The determination of ineligibility from which Heaver appealed to the ULJ addressed only the deduction of Social Security benefits from her weekly unemployment benefit amount. Although Heaver stated in her request for reconsideration that she believed she was eligible for PUA benefits, the ULJ did not decide the issue. Instead, the ULJ's order on reconsideration indicated that Heaver's eligibility for PUA benefits would be "addressed separately." DEED asserts in its brief that, after this appeal was filed, DEED sent Heaver a separate determination directly addressing her eligibility for PUA benefits and determining that she was ineligible. Therefore, Heaver may properly address the issue through the appropriate appeal process in that proceeding.

Conclusion

In reaching our decision, we recognize that Heaver has experienced difficult financial circumstances. But there is no equitable or common-law allowance of unemployment benefits. Minn. Stat. § 268.069, subd. 3 (2020). And the law is clear that, under these circumstances, Heaver cannot receive any amount of state unemployment benefits or FPUC benefits, and her eligibility for PUA benefits is not properly before this court. For these reasons, the ULJ did not err in reaching the decision.

Affirmed.