

*This opinion is nonprecedential except as provided by  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  
A21-1574**

Lisa Falck,  
Relator,

vs.

One Call Medical, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 22, 2022  
Affirmed as modified  
Johnson, Judge**

Department of Employment and Economic Development  
File No. 48051637-2

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One Call Medical, Inc., Jacksonville, Florida (respondent employer)

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Slieter,  
Judge.

## **NONPRECEDENTIAL OPINION**

**JOHNSON**, Judge

Lisa Falck was laid off from her job but was given ten weeks of severance pay, which made her ineligible for unemployment benefits for ten weeks. We conclude that the unemployment-law judge correctly determined the date of the beginning of Falck's period of temporary ineligibility but incorrectly determined the amount of her overpayment. Therefore, we affirm as modified.

### **FACTS**

Falck was employed by One Call Medical, Inc. (OCM) from 2016 until 2020. At the end of her employment, she was a regional sales director, earning a weekly salary of \$1,682.

OCM placed Falck on an unpaid furlough in April 2020. She promptly established an unemployment benefit account with the department of employment and economic development and began receiving weekly benefits of \$740.

On July 13, 2020, OCM informed Falck that she would be laid off on August 3, 2020. OCM offered Falck an agreement that would provide her with ten weeks of severance pay at her regular salary. Falck signed the agreement and returned it to OCM, and her employment ended on August 3, 2020. OCM made the first severance payment to Falck on September 4, 2020, which corresponded to OCM's biweekly pay period of August 17, 2020, to August 30, 2020, and Falck received four additional severance payments for the subsequent eight weeks.

On September 23, 2020, the department issued a determination of ineligibility stating that, as of August 4, 2020, Falck was ineligible for unemployment benefits because she was receiving or would receive severance payments. Falck filed an administrative appeal. An unemployment-law judge (ULJ) held an evidentiary hearing by telephone in December 2020 and issued a written decision in January 2021. Falck requested reconsideration. In October 2021, the ULJ issued a second decision that made various modifications to the first decision. Falck again requested reconsideration. In November 2021, the ULJ issued a third decision that further modified the prior decisions. In the November 2021 decision, the ULJ determined that, because of her receipt of severance payments, Falck was ineligible for unemployment benefits “for the weeks of August 2, 2020 through October 10, 2020,” and that her ineligibility resulted in an overpayment of \$4,440. Falck appeals from the November 2021 order by way of a writ of certiorari.

### **DECISION**

This court reviews a ULJ’s decision regarding eligibility for unemployment benefits to determine whether the findings, inferences, conclusion, or decision are affected by an error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. *See* Minn. Stat. § 268.105, subd. 7(d) (2020). We view questions of fact in the light most favorable to the decision of the ULJ and “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Ward v. Delta Airlines*, 973 N.W.2d 649, 651 (Minn. App. 2022), *rev. denied* (Minn. June 21, 2022). “If the relevant facts are not in dispute, we apply a *de novo* standard of review to the ULJ’s interpretation of the unemployment statutes and to the ultimate question whether an

applicant is eligible to receive unemployment benefits.” *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

### **I. Period of Ineligibility**

Falck first argues that the ULJ erred by concluding that she was temporarily ineligible for unemployment benefits as of August 2, 2020. Falck argues that the ULJ should have concluded that her period of ineligibility began two weeks later, on August 17, 2020, which is the beginning of the OCM pay period corresponding to her first severance payment.

The department pays unemployment benefits to applicants who meet the statutory requirements. Minn. Stat. § 268.069, subd. 1 (2020). An applicant’s benefits may be reduced or delayed by the applicant’s receipt of severance pay. “An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment,” Minn. Stat. § 268.085, subd. 3b(a) (2020), so long as the amount of weekly severance pay is greater than the weekly unemployment benefit amount, *id.*, subd. 3b(e).

If an applicant is ineligible because of severance pay, the applicant’s severance payments “are applied to the period immediately following the later of [1] the date of separation from employment or [2] the date the applicant first becomes aware that the employer will be making a payment.” *Id.*, subd. 3b(b). “The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this paragraph.” *Id.*

In this case, there is no dispute that Falck received severance pay that exceeded her weekly benefit amount, and there is no dispute that she should be deemed ineligible for a ten-week period. The only dispute is *when* Falck was ineligible for unemployment benefits: beginning on August 2, 2020, as determined by the ULJ, or on August 17, 2020, as argued by Falck.

To determine the beginning of Falck’s period of ineligibility, it is necessary to determine two dates and to apply the latter date. *See id.* The first relevant date is “the date of separation from employment.” *Id.* It is undisputed that Falck’s date of separation from employment with OCM was August 3, 2020.

The second relevant date is “the date the applicant first becomes aware that the employer will be making a [severance] payment.” *Id.* This date is somewhat unclear because there is conflicting evidence in the record. Falck testified that she received a proposed severance agreement from OCM on July 13, 2020. But Falck was unsure of the date on which she signed the severance agreement. She initially testified that she signed it on July 17, 2020, but she later testified that she signed it on July 20, 2020, and she also read from a document indicating that employees were not allowed to sign it until August 1 or 3, 2020. But it is unnecessary to determine the date on which Falck signed the agreement. As noted, the second relevant date is “the date the applicant first becomes *aware* that the employer will be making a payment.” *Id.* (emphasis added). Falck could have had such an awareness before she signed the agreement. Indeed, the evidentiary record supports such a finding given her testimony. The ULJ asked her, “when did you . . .

know that you would be receiving severance?” She answered, “I believe July 13. I just, I didn’t know when they were going to cut me a check.”

Under any interpretation of the evidence, the second relevant date is not later than the first relevant date, August 3, 2020, which was Falck’s last date of employment. The statute provides that the period of ineligibility begins on “the later of” the two relevant dates. *Id.* Accordingly, the ULJ did not err by concluding that Falck’s severance payments apply to the period immediately following August 3, 2020, which includes five days in the week beginning Sunday, August 2, 2020. *See id.* The pro-rated amount of severance pay received on those five days exceeds Falck’s weekly unemployment benefit amount.

Falck asks this court to conclude that her period of ineligibility began two weeks later because she did not receive her first severance payment until September 4, 2020, and that payment related to OCM’s biweekly pay period beginning August 17, 2020. She contends that the applicable statute “does not anticipate the situation involved in this case, where there is a gap” between the beginning of ineligibility and the receipt of severance pay. Contrary to Falck’s contention, the plain language of the statute provides that the date on which a severance payment is made or received is irrelevant. *See id.*; *see also Menyweather*, 872 N.W.2d at 546-47 (affirming ineligibility despite gap of six weeks between end of employment and receipt of severance pay).

Thus, the ULJ did not err by concluding that Falck was temporarily ineligible for unemployment benefits for ten weeks beginning on August 2, 2020.

## **II. Amount of Overpayment**

Falck also argues that the ULJ erred by determining that the amount of her overpayment is \$4,440.

If an applicant is determined to be ineligible for unemployment benefits, any benefit amounts previously paid constitute an overpayment. Minn. Stat. § 268.101, subd. 6 (2020). A person who has received an overpayment “must promptly repay the benefits.” Minn. Stat. § 268.18, subd. 1(a) (2020).

In this case, there is no dispute that Falck received severance pay at a weekly rate of \$1,682, which exceeds her weekly benefit of \$740. *See* Minn. Stat. § 268.085, subds. 3b(d), 3(c)(1). The ULJ concluded that Falck was overpaid \$4,440 on the ground that she received six weekly benefit payments of \$740 during her ten-week period of ineligibility.

Falck contends that the \$4,440 amount is incorrect because it exceeds the total amount of unemployment benefits that she received. Falck is correct. In an affidavit submitted with the department’s responsive brief, the department’s attorney states that, on September 23, 2020 (the date of the determination of ineligibility), the department deducted a total of \$740 from the fifth and sixth benefit payments (corresponding to the weeks beginning August 30, 2020, and September 6, 2020) as offsets to the overpayment that was identified in the determination of ineligibility. The department is authorized by statute to offset an applicant’s unemployment benefits to collect repayment of an overpayment. Minn. Stat. § 268.18, subd. 3a(a). The department’s attorney further states that the \$740 in offsets “were credited to Falck’s account” but that the ULJ’s determination of a \$4,440 overpayment “did not take into account the offsets made for the weeks of

August 30 and September 6.” The obvious conclusion to be drawn from these additional facts is that, at the time of the ULJ’s November 2021 decision, the amount of Falck’s overpayment was \$3,700, not \$4,440.

Thus, the ULJ correctly determined that there is an overpayment but incorrectly stated the amount of the overpayment. At the time of the ULJ’s final decision, the amount of the overpayment was \$3,700.

**Affirmed as modified.**