

*This opinion is nonprecedential except as provided by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
A22-1726
A22-1728**

Daniel McGrane,
Relator (A22-1726),

vs.

Airgas USA, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent,

In the Matter of: Daniel McGrane (A22-1728).

**Filed August 7, 2023
Affirmed
Halbrooks, Judge***

Department of Employment and Economic Development
File No. 48738543-3, 48956198-3

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

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Halbrooks, Judge.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) dismissing his appeals and denying his request for an additional evidentiary hearing after relator failed to participate in the scheduled hearing. Relator argues that he had good cause for failing to participate in the hearing and that the hearing notices were inadequate. We affirm.

FACTS

Relator Daniel McGrane first applied for unemployment benefits and established an unemployment benefit account on April 12, 2020. In spring 2022, he reapplied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) issued two related determinations that McGrane was ineligible to receive benefits. The first determination informed McGrane that he was ineligible to receive unemployment benefits due to his past failure to accurately disclose earnings or hours worked (misrepresentation determination). The notice informed McGrane that he was being penalized for the misrepresentation determination in the amount of \$2,807.60. The second determination informed McGrane that he was ineligible to receive unemployment benefits because he had received income from a prior employer during a time that he also received unemployment benefits resulting in an overpayment of \$7,019 (earnings determination). McGrane appealed both determinations.

On August 26, 2022, DEED mailed McGrane a notice informing him that a ULJ would hold a telephonic evidentiary hearing at 1:00 p.m. on September 14, 2022, to address the issue of “[w]hether [McGrane] received unemployment benefits due to misrepresentation.” Three days later, DEED sent McGrane a second notice, informing him that a ULJ would hold a telephonic hearing at 8:15 a.m. on September 15, 2022, to address the issue of “[w]hether [McGrane] had earnings, including holiday pay, that must be deducted from unemployment benefits.” That same day, DEED mailed a third notice to McGrane informing him that the hearing on the misrepresentation determination was rescheduled to occur on September 15, 2022, at 8:15 a.m.—the same date and time as the earnings determination. The notices informed McGrane that the hearing would last for approximately one hour and that if he needed to reschedule, he should contact the appeals office at the number listed in the letter.

The ULJ called McGrane on September 15 at 8:15 a.m. but McGrane did not answer his phone. The ULJ called McGrane a second time at 8:25 a.m. but McGrane again did not answer. The next day, the ULJ dismissed McGrane’s appeals because of his failure to participate in the scheduled hearing. McGrane requested reconsideration of the dismissal, asserting that he received the notices of hearing set for September 15, but believed the hearing was scheduled for 1:00 p.m. McGrane wrote that he was traveling for work on the morning of September 15 and was unavailable when the ULJ called. McGrane stated that it was “an honest mistake/overlook on [his] part” and requested that he be given a “second chance for [his] error.”

The ULJ determined that the dismissal order was factually and legally correct. As a result, the ULJ found that “McGrane does not have good cause for failing to participate in the hearing on September 15, 2022” and declined to order a new hearing. McGrane now appeals by writ of certiorari.

DECISION

Upon review of a ULJ’s decision on reconsideration, we may affirm or remand for further proceedings, or we may reverse the ULJ’s decision if its “findings, inferences, conclusion, or decision are . . . in violation of constitutional provisions . . . made upon unlawful procedure . . . [or] unsupported by substantial evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2022).

I.

McGrane argues that the ULJ erred by denying his request for an additional evidentiary hearing. When an appealing party fails to participate in the evidentiary hearing, a ULJ “has the discretion to dismiss the appeal by summary decision.” *Id.*, subd. 1a(b) (2022). If the appealing party requests reconsideration of the decision and establishes “good cause” for failing to participate in the evidentiary hearing, the ULJ must order a new evidentiary hearing. *Id.*, subd. 2(d) (2022). Good cause is defined as “a reason that would have prevented a reasonable person acting with due diligence from participating in the hearing.” *Id.* “A reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

In his request for a new evidentiary hearing, McGrane stated that he missed the evidentiary hearing because he mistakenly believed the hearing to be at 1:00 p.m., as it had first been scheduled, and not 8:15 a.m. He stated that he did not answer the phone when the ULJ called because he was traveling for work at the time. The ULJ denied McGrane's request for an additional hearing, concluding that "[a] reasonable person acting with due diligence would have noted the new hearing time as well as the date change" on the reschedule notice and that "[a] reasonable person acting with due diligence would have contacted [DEED] in advance to ask for a reschedule if he was going to be traveling for work at the time of the hearing."

We conclude that the ULJ did not abuse their discretion in determining that McGrane failed to establish good cause for missing the evidentiary hearing. While the first notice sent to McGrane stated that the hearing for the misrepresentation issue would occur on September 14 at 1:00 p.m., the second and third notices informed McGrane that the hearing to address both the misrepresentation and earnings issues was moved to September 15 at 8:15 a.m. The notices further informed McGrane that if he needed to reschedule, he should contact the appeals office at the numbers listed in the letter.

McGrane does not dispute that he received the written notices of the scheduled evidentiary hearing and knew that the date of the hearing was changed to September 15. But he asserts that he was confused about the time change. McGrane's explanation that he noticed the date change but not the time change does not constitute "a reason that would have prevented a reasonable person acting with due diligence from participating in the hearing." Minn. Stat. § 268.105, subd. 2(d); *see also Eley v. Southshore Invs., Inc.*, 845

N.W.2d 216, 220 (Minn. App. 2014) (concluding that “[a] reasonable person acting with due diligence would have reviewed the printed documents regarding her appeal of DEED’s ineligibility determination to ensure that she had written confirmation of the hearing date”).

Further, McGrane’s explanation that he was unable to participate in the hearing because he was traveling for work cannot establish good cause for missing the hearing. *See Skarhus*, 721 N.W.2d at 345 (concluding that a work conflict is not “good cause” to miss the evidentiary hearing when the relator did not attempt to reschedule the evidentiary hearing or show that a time-off request to her employer was denied). Because the ULJ acted within their discretion in determining that McGrane’s explanation did not amount to good cause, we will not disturb the ULJ’s decision to deny McGrane’s request for an additional evidentiary hearing.

II.

McGrane also argues that DEED’s notices of hearing were inadequate because they failed to provide him with sufficient information about the misrepresentation and earnings determinations. In effect, McGrane argues that the ULJ’s decision requires reversal under Minn. Stat. § 268.105, subd. 7(d), because it was made in violation of constitutional due-process provisions and upon unlawful procedure. We disagree.

When an applicant appeals from an initial determination of ineligibility, DEED must provide all parties with a notice of hearing, “at least ten calendar days before the scheduled date of hearing” and the notice must include “the time, date, method by which the hearing will be conducted, and issues to be considered at the hearing.” Minn. R. 3310.2905, subp. 2 (2021). The notices DEED provided McGrane satisfied these requirements. The notices

included the time and date of the hearing and were sent to McGrane more than ten days before the scheduled date of the hearing. The notices stated that the hearing would occur by telephone and that the issues to be considered at the hearing: “[w]hether [McGrane] received unemployment benefits due to misrepresentation” and “[w]hether [McGrane] had earnings, including holiday pay, that must be deducted from unemployment benefits.”

McGrane argues that the notices did not include sufficient information about how DEED calculated the overpayment and penalty determinations. But McGrane provides no legal authority to support his argument that DEED must provide detailed explanations for its ineligibility determinations in a hearing notice. Because the notices from DEED informed McGrane of the two issues to be considered at the evidentiary hearing more than ten days before the hearing, DEED’s notices comported with the due-process requirements.

Affirmed.