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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2025**

Harriet M. Liedtke,  
Appellant,

vs.

Minnesota Department of Employment and Economic Development,  
Respondent.

**Filed July 18, 2011  
Affirmed  
Peterson, Judge**

Ramsey County District Court  
File No. 62-CV-10-3342

Harriet M. Liedtke, Burnsville, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Angela Behrens, Assistant Attorney General, St. Paul,  
Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and  
Schellhas, Judge.

**UNPUBLISHED OPINION**

**PETERSON, Judge**

This pro se appeal is from a summary judgment that dismisses appellant's petition to compel respondent to produce the audiotape of an evidentiary hearing held in an unemployment-benefits proceeding. We affirm.

## FACTS

In early 2009, appellant Harriet M. Liedtke filed a claim for unemployment benefits with respondent Minnesota Department of Employment and Economic Development. A department adjudicator determined that appellant was ineligible for unemployment benefits, and appellant appealed to an unemployment-law judge (ULJ). Following a March 16, 2009, evidentiary hearing, the ULJ issued a decision determining that appellant was eligible for unemployment benefits. Neither party requested reconsideration, and the period to file a reconsideration request expired on April 9, 2009.<sup>1</sup>

After the period for filing a reconsideration request expired, appellant requested a copy of the testimony presented at the hearing before the ULJ. By letter dated May 5, 2009, respondent notified appellant:

Under the provisions of Minnesota Statutes Section 268.105, Subdivision 5, after the time period for filing an appeal has elapsed, recorded testimony and exhibits received into evidence in an unemployment appeal proceeding may only be made available to an involved party pursuant to a court order.

At the time of appellant's hearing before the ULJ, respondent used cassette tapes to record hearings. After an unemployment-benefits decision became final, respondent retained the ULJ's decision but disposed of the rest of the file. In April 2010, appellant

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<sup>1</sup> The district court found that the ULJ's decision was issued on March 19, 2009, and became final on April 8, 2009, as stated in an affidavit submitted by an attorney employed by respondent. But the decision issued by the ULJ states that the period to file a reconsideration request expired on April 9, 2009. Although the ULJ's decision was dated March 19, the April 9 expiration date indicates that it was not sent to the parties until March 20. *See* Minn. Stat. § 268.105, subd. 2(a) (2008) (stating that reconsideration request must be filed within 20 calendar days of sending of ULJ's decision).

filed a petition in district court seeking a recording of her March 16, 2009, hearing before the ULJ to use in a worker's compensation proceeding. After the Minnesota Attorney General's Office informed respondent of appellant's request, respondent notified appellant, "It has recently come to our attention that you are seeking the tape recording from your unemployment insurance hearing . . . . Unfortunately, [respondent] destroyed the recording shortly after [the ULJ's] decision became final in April of 2009."

On May 24, 2010, appellant served on respondent her petition seeking a recording of the March 16, 2009, hearing. Respondent moved to dismiss the petition or, alternatively, for summary judgment. The district court conducted a hearing on appellant's petition and respondent's motion. At the hearing, Lee B. Nelson, an attorney employed by respondent, testified that after being informed of appellant's request by the attorney general's office, he and his legal assistant separately searched respondent's storage vaults and found that all recordings of hearings that occurred before October 2009 had been discarded. Nelson also stated in an affidavit:

I understand that [appellant] suggests that she previously requested a copy of the testimony from her unemployment-benefits hearing. [Respondent] generally does not maintain records of telephone calls or other requests for audiotapes. Had [appellant] requested a copy of the testimony within the reconsideration period, however, she would have received it. With the exception of her current petition, [respondent] has no record of [appellant] obtaining or seeking a court order for the audiotape from her unemployment-benefits hearing. Had [appellant] obtained a court order after the reconsideration period ended but before [respondent] discarded the audiotape, [respondent] would have provided her with a copy.

The district court denied appellant's petition and granted summary judgment for respondent. The district court denied appellant's request to seek reconsideration. This appeal followed.

## DECISION

On appeal from a summary judgment, appellate courts review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law; in doing so, appellate courts view the evidence in the light most favorable to the party against whom summary judgment was granted. *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009). To survive a summary-judgment motion, the nonmoving party must present "sufficient evidence to permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (emphasis omitted). "Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

The unemployment-insurance statute in effect at the time of appellant's hearing before a ULJ provided that "[a] copy of any recorded testimony and exhibits offered or received into evidence at the hearing must, upon request, be furnished to a party at no cost during the time period for filing a request for reconsideration or while a request for reconsideration is pending."<sup>2</sup> Minn. Stat.

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<sup>2</sup> In 2009, the legislature amended Minn. Stat. § 268.105, subd. 5(b), to permit a party to obtain a copy of testimony during the period to appeal to this court or while an appeal is pending. 2009 Minn. Laws ch. 78, art. 4, § 38, at 619. The amendment applies to ULJ decisions issued on or after August 2, 2009. *Id.* § 52, at 623.

§ 268.103, subd. 5(a) (2008). The statute further provided that “if recorded testimony and exhibits received into evidence at the evidentiary hearing are not requested during the time period for filing a request for reconsideration, or while a request for reconsideration is pending, that testimony and other evidence may later be made available only under a district court order.” *Id.*, subd. 5(b) (2008).

However, although the statute permitted a party to seek a court order to obtain a copy of recorded testimony, the statute also provided that “[r]egardless of any law to the contrary, the commissioner may provide for the destruction of any records, reports, or reproductions, or other papers that are no longer necessary for the administration of [Minn. Stat. ch. 268].” Minn. Stat. § 268.186(d) (2008); *see also* Minn. Stat. § 268.105, subd. 1(c) (2008) (providing that ULJ’s decision becomes final if no party requests reconsideration). The district court determined that respondent’s discarding of the recording of appellant’s hearing “was in the usual course of business and within [respondent’s] statutory authority.”

Appellant contends that there is a conflict between the statute that permits a party to seek a court order to obtain a copy of a recording and the statute that permits respondent to destroy records. But Minn. Stat. § 268.186(d) authorizes the destruction of records “[r]egardless of any other law.” Because the ULJ’s decision in appellant’s unemployment case became final when the period to request reconsideration expired, the recording of appellant’s hearing before the ULJ was no longer necessary for the administration of the unemployment-insurance program and the destruction of the recording was within respondent’s statutory authority.

Appellant argues that respondent acted wrongfully because it discarded the recording after appellant made a telephone call requesting the recording in April 2009. But appellant does not claim that she made her telephone request before April 9 when the period to obtain the recording without a court order expired. Respondent informed appellant in May 2009 that a court order would be needed to obtain the recording, but by the time respondent learned that appellant had filed her petition in district court in April 2010, the recording had been discarded.

**Affirmed.**