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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2267**

Richard Hauger,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 22, 2011
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 26039813

Richard Hauger, Wisconsin Rapids, Wisconsin (pro se relator)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he was overpaid benefits because he was ineligible to receive federal emergency unemployment compensation. We affirm.

FACTS

Relator Richard Hauger established an unemployment-benefits account in Minnesota under the reciprocal-benefits statute, Minn. Stat. § 268.131 (2010), based on wage credits earned in Minnesota, Iowa, and Tennessee. He established the account in April 2009 and exhausted the account in November 2009. Because he could not establish a new Minnesota account until April 2010, Hauger applied for and received federal emergency unemployment compensation (EUC).

Respondent Minnesota Department of Employment and Economic Development (DEED) subsequently learned that Hauger was eligible for state unemployment benefits in Tennessee. DEED determined that Hauger's eligibility for benefits in Tennessee meant that he was ineligible to receive EUC benefits and was overpaid a total of \$9,828 between November 1, 2009, and July 2, 2010. Hauger appealed. After a hearing, the ULJ determined that Hauger was not entitled to the EUC benefits he received because he was eligible for benefits in Tennessee. Hauger sought reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). We review a ULJ's decision to determine whether the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other

error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” *Id.*

An applicant is eligible for EUC benefits only if the applicant meets the requirements of EUC law, as codified in Minnesota statutes, including that the applicant is an “exhaustee.” Minn. Stat. § 268.115, subs. 3, 7 (2010); *see also* Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C.A. § 3304 (West Supp. 2010). An exhaustee is

an applicant who, in the eligibility period:

(i) the benefit year having not expired has received the maximum amount of regular unemployment benefits that were available under section 268.07; or

(ii) the benefit year having expired, has insufficient wage credits to establish a new benefit account; and has no right to any type of unemployment benefits under any other state or federal laws and is not receiving unemployment benefits under the law of Canada.

Minn. Stat. § 268.115, subd. 1(7) (2010).

Hauger acknowledges that he was eligible for unemployment benefits in Tennessee at the time he received EUC benefits but argues that the ULJ misinterpreted section 268.115 in determining that Hauger was not an exhaustee. We consider issues of statutory interpretation *de novo*. *Carlson v. Dep’t of Emp’t & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008). If a statute is unambiguous, we must apply its plain language. Minn. Stat. § 645.16 (2010); *Carlson*, 747 N.W.2d at 371.

Hauger argues that the requirement that an applicant has no right to unemployment benefits from another state applies only to applicants who fall within part (ii) of the exhaustee definition. Because his benefit year had not expired at the time he began

receiving EUC benefits, Hauger asserts that he met the definition of exhaustee contained in part (i). We are not persuaded. The legislature's use of a semicolon and the word "and" following part (ii) clearly separates the requirement from both parts (i) and (ii) and evinces the intent to apply the requirement to both parts of the definition. While the meaning of the statute may have been more clear had the requirement come before the numbered provisions, we conclude that the requirement plainly applies to both categories of applicants—those whose benefit year has expired and those whose benefit year has not. *See Voge v. Dep't of Emp't & Econ. Dev.*, 794 N.W.2d 662, 665 (Minn. App. 2011) (stating that the other-state-ineligibility requirement applies to both enumerated categories of applicants). Accordingly, the ULJ did not err in determining that Hauger was not an exhaustee and, therefore, ineligible for EUC benefits.

Hauger next argues, in the alternative, that he did not become ineligible for EUC benefits until August 7, 2010, the date that Tennessee apparently began paying unemployment benefits. We disagree. Hauger's eligibility for benefits in Tennessee is a matter of Tennessee law. And it is undisputed in this record that Tennessee concluded that Hauger was eligible for benefits starting November 1, 2009. Because it is Hauger's eligibility for benefits in Tennessee, not his receipt of benefits, that places him outside the definition of an exhaustee, the fact that he did not apply for and receive Tennessee benefits until August 2010 does not affect his eligibility for EUC benefits. The ULJ did not err in relying on the November 2009 eligibility date.

Finally, Hauger argues that he should not be obligated to repay the EUC benefits because DEED should have better advised him regarding his eligibility for benefits and

this result undermines the wage-combining provisions of the reciprocal-benefits law. We are not persuaded. Hauger has not cited and our research has not identified any authority imposing an obligation on DEED to advise applicants regarding their eligibility for benefits under Minnesota, federal, or any other state's law. To the contrary, the Minnesota Unemployment Insurance Law consistently indicates that it is incumbent on an applicant to provide all necessary information regarding eligibility for benefits and allows, but does not require, DEED to reevaluate an applicant's eligibility if new information becomes available and to order repayment of benefits to which an applicant was not entitled. *See* Minn. Stat. §§ 268.069, subd. 1 (requiring DEED to pay benefits to an applicant who has met eligibility requirements), 268.07, subd. 1 (requiring applicant to provide "all requested information" and permitting DEED a two-year window to reconsider any determination of benefit account), 268.0865, subd. 1 (providing that a continuing request for unemployment benefits certifies that the applicant meets ongoing eligibility requirements) (2010).

DEED's failure to inform Hauger of his eligibility for benefits in Tennessee does not affect his eligibility for EUC benefits or relieve him of responsibility for the overpayment. A person who receives unemployment benefits to which they were not entitled, "must promptly repay the unemployment benefits to the trust fund." Minn. Stat. § 268.18, subd. 1(a) (2010). Hauger has not identified any exception to this rule. *Cf.* Minn. Stat. § 268.069, subd. 3 (2010) ("There is no equitable or common law denial or

allowance of unemployment benefits.”). Accordingly, the ULJ did not err in determining that Hauger is obligated to repay the \$9,828 he received in EUC benefits.¹

Affirmed.

¹ The record reflects that a significant portion of Hauger’s Tennessee benefits have been paid directly to Minnesota toward this overpayment. Accordingly, Hauger is responsible only for the remaining portion of the overpayment.