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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2195**

Chester W. Mulholland,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed September 10, 2012  
Affirmed  
Connolly, Judge**

Department of Employment and Economic Development  
File No. 28390483-3

Chester W. Mulholland, Roseville, Minnesota (pro se relator)

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

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and  
Connolly, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Relator challenges the unemployment-law judge's (ULJ) decision that he did not  
have good cause for failing to file requests to continue his unemployment-compensation

benefits between June 26, 2011 and July 16, 2011. Because there is substantial evidence in the record to support the ULJ's determination, we affirm.

## **FACTS**

Relator Chester W. Mulholland applied for unemployment-compensation benefits and established a benefit account in April 2011 with respondent, the Minnesota Department of Employment and Economic Development (DEED). He filed continued-benefit requests for each week through June 25, 2011. His last filing was on June 29 to request benefits for the week of June 19 through June 25.

At the end of June 2011, relator received a check from his former employer for a retroactive pay increase. Relator was unsure of several details regarding the pay increase, including the time period to which the increase applied. However, relator did not contact his employer for clarification regarding the check because he did not want to appear critical of a decision that was seemingly favorable to him. Relator also did not contact DEED for guidance because he felt that he did not have sufficient information regarding the pay increase to allow for meaningful communication about its effect on his eligibility for unemployment benefits. Moreover, relator felt discouraged from contacting DEED because of previous communications that had seemed contradictory and confusing. Because he was concerned about a potential overpayment of unemployment benefits, relator chose to not file continued-benefit requests for the four weeks between June 26, 2011 and July 23, 2011.

Relator ultimately resolved his confusion with respect to the pay increase on his own and, on August 8, 2011, decided to request unemployment benefits for each of the

four weeks between June 26 and July 23. DEED determined that relator was ineligible for benefits during the period of June 26 through July 23 because he had failed to file timely continued-benefit requests for that period. Relator appealed DEED's determination, and a hearing was conducted on September 15, 2011. The ULJ issued a decision modifying the determination, holding that relator failed to make a timely request for unemployment benefits for each of the three weeks between June 26 and July 16, but determined that relator was eligible for benefits for the week of July 17 because his corresponding request on August 8 was timely. The ULJ further determined that relator did not have good cause for failing to request continued benefits between June 26 and July 16. Relator filed a request for reconsideration of the decision, and the ULJ affirmed. This certiorari appeal follows.

### **D E C I S I O N**

On appeal, this court may reverse, modify, or remand the decision of a ULJ if the substantial rights of the applicant have been prejudiced because the findings, inferences, conclusions of law, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d) (2010). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination of whether an employee is eligible for unemployment benefits is a question of law reviewed de novo. *Carlson v. Dep't of Emp't and Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

Relator does not contest the ULJ's determination that he failed to make timely requests for unemployment benefits for the three weeks between June 26 and July 16. Rather, relator challenges the ULJ's determination that he did not have good cause for failing to request those benefits. Relator argues that he did not file for unemployment benefits for the three weeks between June 26 and July 16 because he did not want to receive benefits for which he was not entitled. Therefore, relator asserts that he acted in a reasonable and ethical manner, and in the best interests of the state.

To be entitled to unemployment benefits, applicants must meet several eligibility requirements, including "all of the ongoing eligibility requirements under section 268.085." Minn. Stat. § 268.069, subd. 1(3) (2010). Section 268.085, subd. 1(1) (2010) requires that "the applicant has filed a continued request for unemployment benefits for that week under section 268.0865." Minn. Stat. § 268.0865, subd. 1 (2010) explains that "[a] continued request for unemployment benefits is a certification by an applicant, done on a weekly basis, that the applicant is unemployed and meets the ongoing eligibility requirements for unemployment benefits under section 268.085." If a continued request is not filed within two calendar weeks following the date designated for filing, the continued request will not be accepted. Minn. Stat. § 268.0865, subs. 3(c), 4(b) (2010). If filed after the two-week period, "the applicant is ineligible for unemployment benefits for the period covered by the continued request, unless the applicant shows good cause for failing to file the continued request . . . within the time period required." *Id.*, subd. 3(c).

“Good cause” is defined as “a compelling substantial reason that would have prevented a reasonable person acting with due diligence from filing a continued request for unemployment benefits within the time periods required.” *Id.*, subd. 5(a) (2010). The statute further provides that:

“Good cause” does not include forgetfulness, loss of the continued request form if filing by mail, having returned to work, having an appeal pending, or inability to file a continued request for unemployment benefits by the method designated if the applicant was aware of the inability and did not make diligent effort to have the method of filing a continued request changed by the commissioner.

*Id.*, subd. 5(b).

In his ruling, the ULJ determined that relator did not have good cause because:

A reasonable diligent person would have reviewed the handbook provided and would not have waited as long as [relator] did to contact [DEED] regarding his benefits to resolve the issues. His reasons for failing to communicate with his former supervisor and [DEED] do not provide good cause for his failure to request benefits for the period in question in a timely manner.

There is substantial evidence in the record to support the ULJ’s findings. An Informational Handbook was sent to the relator that instructs applicants to make a request for unemployment-benefit payments every week, even if the applicant’s eligibility for benefits is still being decided or an appeal from an ineligibility determination is pending. The handbook advises that if the applicant fails to request benefits for more than two weeks, the applicant may lose payments for those weeks where benefits were not requested in a timely manner. Relator received the handbook, but acknowledged that he “didn’t read it through completely.” A reasonable person acting with due diligence, who

is seeking government benefits, would thoroughly read the informational materials that are provided.

Relator also acknowledges that during the period in question he did not attempt to contact either his former employer or DEED for clarification or guidance. Relator argues that he did not contact DEED because he felt he did not have sufficient information regarding the pay increase to allow for meaningful communication about its effect on his eligibility for benefits. However, relator asserts that he did not contact his employer for more information regarding the pay increase because he did not know how to approach his employer without appearing to be critical of a decision that was seemingly done for his benefit. Additionally, relator argues that in the past he had received contradictory and unhelpful information from DEED. Therefore, relator argues that a reasonable person in his position would not have contacted DEED because there was no reason to believe that DEED would have been helpful.

Relator's inaction, as evidenced by his failure to contact either his employer or DEED, was not the course of action a reasonable person would take. *See* Minn. Stat. § 268.0865, subd. 5(a) (defining "good cause" as "a compelling substantial reason that would have prevented a reasonable person acting with due diligence from filing a continued request for unemployment benefits within the time periods required."). A reasonable person acting with due diligence would contact his employer for clarification and contact DEED to resolve any confusion.

**Affirmed.**