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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0171**

Sujata Sangwan,
Relator,

vs.

Department of Employment and
Economic Development,
Respondent.

**Filed September 4, 2018
Reversed and remanded
Jesson, Judge**

Department of Employment and
Economic Development
File No. 35919814-3

Sujata Sangwan, St. Paul, Minnesota (pro se relator)

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

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Soon after relator Sujata Sangwan was informed by her school district that she would not be offered a teaching contract for the following year, she went to the office of respondent Department of Employment and Economic Development (DEED) to ask when

she should apply for unemployment benefits. Sangwan alleges that she received inaccurate information from a DEED employee regarding when she should apply and, as a result, missed three months of benefits payments. DEED found her ineligible for these months, and the unemployment law judge (ULJ) affirmed DEED's determination. Because the ULJ failed to determine whether Sangwan actually received inaccurate information from a DEED employee, we reverse and remand.

FACTS

Relator Sujata Sangwan was employed as a teacher with a school district for the 2016-2017 school year. But in March 2017, she received a letter stating that her contract would not be renewed for the following school year. Her last day at the district would be June 9, 2017. Sangwan went to the DEED office to inquire about unemployment benefits on May 8, 2017, approximately one month before her last day. Sangwan testified that she showed a DEED employee the letter she received, asked when she should apply for benefits, and was told not to do so until the end of summer since all teachers are unemployed for the three-month summer break.

Sangwan returned to the DEED office on September 8, 2017 and filed for unemployment benefits. After reviewing her application, DEED determined Sangwan was eligible for benefits. But DEED only backdated those benefits one week because benefits can be backdated no more than one week unless DEED prevented the applicant from completing an application, which it determined was not the case. Sangwan returned to the DEED office on September 28, 2017, and asked that the benefits be backdated to June 11,

two days after her last day of employment. DEED denied the request. Sangwan challenged the denial, and a ULJ heard the case.

Sangwan represented herself at the hearing with the ULJ and provided the only testimony. She testified that she received inaccurate advice from a DEED employee not to file for benefits earlier, even after she showed the employee the letter from the district telling her she would not be employed the following school year.

The ULJ issued an order determining that, because the “department did not prevent her from filing an earlier application for benefits,” DEED’s determination that Sangwan was not eligible for unemployment benefits dating back to June 11, 2017 was proper. The ULJ stated Sangwan was not credible because:

[Sangwan] says she showed the March 2017 letter she received from her employer to the department employee, and that letter stated her contract would not be renewed for the following school year. Thus, the employer’s March 2017 [letter] *directly contradicted* whatever it was the department’s employees may have told her.

(Emphasis added.) Sangwan requested reconsideration, and the ULJ affirmed his earlier decision.

Sangwan appeals.

DECISION

Sangwan argues that she failed to file for unemployment benefits earlier because she was misinformed by a DEED employee that she was not eligible until the end of the summer break. And, because she was misinformed by a DEED employee, Sangwan argues DEED should backdate her benefits to June 11, 2017 in accordance with the prevented-

from-filing exception. This court reviews a ULJ's decision that an applicant is ineligible for unemployment benefits de novo. *Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015). And it views the ULJ's factual findings in the light most favorable to the decision, while giving deference to the credibility determinations made by the ULJ. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008). To address this issue, we first examine the prevented-from-filing exception statute and accompanying caselaw, and then determine whether the ULJ erred in determining that the exception did not apply.

Minnesota Statutes section 268.07, subdivision 3b (2016)—which contains the prevented-from-filing exception—states that “[a]n application for unemployment benefits may be backdated one calendar week before the Sunday of the week the application was actually filed if the applicant requests the backdating within seven calendar days of the date the application is filed.” But there is an exception to this one-week rule. “If an individual attempted to file an application for unemployment benefits, but was *prevented from filing an application by the department*, the application is effective the Sunday of the calendar week the individual first attempted to file an application.” Minn. Stat. § 268.07, subd. 3b (emphasis added).

In *Morales*, this court addressed the prevented-from-filing exception under circumstances similar to the facts before us today. *See Morales v. Dep't of Emp't & Econ. Dev.*, 713 N.W.2d 882 (Minn. App. 2006). There the ULJ found that the applicant sought advice from DEED on when he should apply for unemployment benefits, was misinformed by a DEED employee, applied based on the misinformation, and was denied the ability to

backdate the unemployment benefits to the date when he should have applied. *Id.* at 883. Nonetheless the ULJ determined the prevented-from-filing exception did not apply, and affirmed DEED's decision not to backdate. *Id.* Based on the ULJ's findings, this court reversed because the applicant made a bona fide attempt to apply for benefits but was prevented from doing so by DEED (1) giving misinformation and (2) not having any written materials advising him to the contrary. *Id.* at 884.

Here Sangwan testified that she was given misinformation from DEED and this testimony was not contradicted at the hearing. But in the ULJ's order, no findings were made regarding whether DEED misinformed Sangwan. Instead, the ULJ found Sangwan not credible, in part because of a letter not in the record. Under the prevented-from-filing exception statutory language and *Morales*, we determine that a reversal and remand is appropriate because: (1) the ULJ made insufficient findings regarding whether Sangwan received misinformation from DEED; (2) there were no written materials in the record advising Sangwan to the contrary; and (3) the ULJ's determination that Sangwan was not credible lacked sufficient reasoning.

First, the ULJ's factual findings regarding whether Sangwan received misinformation are insufficient. Under *Morales*, if Sangwan attempted to apply for unemployment benefits, but was prevented from doing so by virtue of being given misinformation by DEED, then the prevented-from-filing exception must apply as a matter of law. *See Morales*, 713 N.W.2d at 884 (“Under Minn. Stat. § 268.07, subd. 3b(a), relator attempted to apply for benefits and was prevented from doing so by the department as a matter of law.”). However, here the ULJ failed to make a factual determination as to

whether Sangwan received misinformation from DEED, and thus the factual findings do not substantially support a determination that the prevented-from-filing exception did not apply. We therefore reverse and remand with instructions for the ULJ to make this finding in order to determine whether the exception applies. *See Friend v. Gopher Co.*, 771 N.W.2d 33, 40 (Minn. App. 2009) (“[W]e conclude that the findings are insufficient to permit effective appellate review and we remand for the district court to make further findings.”).¹

Second, there are no written materials in the record that contradicted the misinformation Sangwan testified she received. In *Morales*, we determined that the applicant was prevented by DEED from applying not only because of misinformation, but also because there were no written materials advising the applicant to the contrary. *See Morales*, 713 N.W.2d at 884. Here, the ULJ found that a letter contradicted any misinformation Sangwan could have received, but this letter is not in the record. Furthermore, there is no evidence to support the assertion that the letter included anything about Sangwan’s eligibility for unemployment benefits. Therefore, on remand, the ULJ must determine whether there were written materials that advised Sangwan correctly when

¹ DEED argues that the plain language of the statute governing when school employees should apply for unemployment benefits—Minnesota Statutes section 268.085, subdivision 7 (2016)—is clear, and Sangwan should have been aware of the requirements through this statute. We are not persuaded. This subdivision is not a model of clarity. With subdivision 7’s eleven different components, and references to terms such as “wage credits” and “reasonable assurance” that are rarely used outside of the legal context, we cannot determine that an applicant should be aware of her obligations in the face of misinformation from DEED.

to file for unemployment benefits. If so, these materials must be in the record to enable sufficient appellate review.

Finally, the ULJ's determination that Sangwan was not credible in her testimony is insufficient on its own to support affirming the decision because the credibility assessment is not explained. "When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2016). Here, the credibility determination has a significant impact because whether Sangwan received misinformation is instrumental in determining if the prevented-from-filing exception applies.

In its order, the ULJ referenced Sangwan's credibility twice. The first instance is when the ULJ noted that Sangwan was not credible because the letter she received from her employer contradicted "whatever" misinformation DEED gave her. But as we explained earlier, this finding is not substantially supported by the record as the letter is not in the record. The second instance is when the ULJ stated that "Sangwan's overall credibility was also negatively affected because of her attempt to shift responsibility from herself to the department." However, this reasoning does not help determine Sangwan's credibility as to whether or not DEED provided misinformation. Since the ULJ's credibility determination is not sufficiently reasoned, it is insufficient on its own to support affirming the ULJ's decision. If the ULJ determines that Sangwan is not credible on remand, the reasoning must be explained.

In sum, the statute governing when teachers may apply for unemployment compensation is complicated and can be difficult for individuals to understand. And when Sangwan was confused as to when she should apply, she did what applicants often do when they need answers. She asked DEED. Whether Sangwan received misinformation from DEED in the absence of any written materials advising her correctly is dispositive of whether the prevented-from-filing exception applies. We therefore reverse and remand for the ULJ to make the necessary findings.

Reversed and remanded.