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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1941**

Luis Padilla,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed July 27, 2020
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 37574611

Luis F. Padilla, Savage, Minnesota (*pro se* relator)

Anne B. Froelich, Keri A. Phillips, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Luis Padilla was terminated from his employment and was offered severance pay. In his application for unemployment benefits, he stated that he did not expect to receive severance pay. Shortly thereafter, he signed a written separation agreement that entitled him to a lump-sum severance payment equal to 14 weeks of his base salary. Meanwhile,

he also began receiving unemployment benefits. After the issue came to light, an unemployment-law judge (ULJ) determined that Padilla was ineligible for unemployment benefits during the 14-week period after his termination and that he improperly received benefits during that period because he had made a misrepresentation. The ULJ ordered Padilla to repay 14 weeks of unemployment benefits and to pay a 40-percent penalty. We conclude that the ULJ did not err by determining that Padilla made a misrepresentation because he did not have a good-faith belief as to the correctness of his statement that he did not expect to receive severance pay. Therefore, we affirm.

FACTS

Padilla was employed by MOM Brands Company, which makes breakfast cereal, as director of customer development and sales communication, with a base salary of \$131,500. His employment was terminated on March 1, 2019. On that date, the company gave him a draft of a written agreement that, if signed, would allow Padilla to receive a lump-sum payment equal to 14 weeks of base salary in exchange for releasing the company from liability related to the termination of his employment. Padilla did not immediately sign the agreement but asked an attorney to review it.

Shortly after his termination, Padilla applied to the department of employment and economic development for unemployment benefits. Under the heading “Eligibility Information,” the application asked, “Have you received, or do you expect to receive, any of the following upon separation from employment: . . . Severance or any other separation payments?” The application provided three possible answers: “YES,” “NO,” or “NOT

SURE.” Padilla answered “NO.” An unemployment-benefit account was established, and Padilla began receiving a weekly benefit payment of \$717.

In late March 2019, Padilla signed the written agreement that his former employer had given him on the day of his termination. On March 29, 2019, he received a lump-sum payment of \$35,276.

In August 2019, the department reviewed Padilla’s unemployment-benefits account after receiving information from MOM Brands that it had given him severance pay. During an investigation, Padilla admitted that he had received severance pay following the termination of his employment by MOM Brands. On September 3, 2019, the department determined that Padilla had been ineligible to receive unemployment benefits between March 3, 2019, and June 1, 2019. Thus, the department determined that he was overpaid \$9,321 in benefits. Separately, the department determined that Padilla had received the overpayment of benefits due to a misrepresentation because he stated in his application that he did not expect to receive severance pay and did not disclose the severance pay after he received it. Thus, the department ordered Padilla to pay an overpayment penalty equal to 40 percent of the overpayment, *i.e.*, \$3,728.

Padilla administratively appealed both of the department’s determinations. In September 2019, a ULJ issued two decisions affirming the determinations. Padilla requested reconsideration of each decision. The ULJ affirmed its earlier decision with respect to each determination.

Padilla petitioned this court for a writ of certiorari with respect to both administrative appeals. We issued the writ but later determined that Padilla did not timely

serve his petition on his former employer. Thus, we determined that jurisdiction was lacking with respect to the first administrative appeal, which concerns the overpayment, but that Padilla could proceed with respect to the second administrative appeal, which concerns the misrepresentation issue and the penalty.

D E C I S I O N

Padilla argues that the ULJ erred by determining that he received an overpayment of unemployment benefits due to a misrepresentation.

An applicant for unemployment benefits makes a “misrepresentation” if he or she “is overpaid unemployment benefits by making a false statement or representation without a good faith belief as to the correctness of the statement or representation.” Minn. Stat. § 268.18, subd. 2(a) (2018). If the department discovers “facts indicating misrepresentation,” the department “must issue a determination of overpayment penalty assessing a penalty equal to 40 percent of the amount overpaid.” *Id.* A determination that an applicant “knowingly and willfully misrepresented or misstated material facts to obtain benefits” depends on an assessment of the credibility of the applicant’s testimony, a matter that “lies within the province” of the ULJ. *Burnevik v. Department of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985). This court reviews a ULJ’s findings of fact “in a light most favorable to the decision, and will not disturb the findings so long as there is evidence in the record that substantially supports them.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 (Minn. App. 2018).

In this case, the ULJ first determined that Padilla received an overpayment. In that determination, the ULJ found that Padilla falsely represented his severance-pay

expectations when he answered “NO” to the severance-pay question on the application, that his receipt of severance pay made him ineligible for unemployment benefits, and that he would not have received unemployment benefits if he had not falsely represented his expectations with respect to severance pay. Because Padilla’s appeal of that determination has been dismissed as untimely, we accept the ULJ’s findings in the first determination as final and conclusive. Consequently, the only question to be resolved in this appeal is whether Padilla made the misrepresentation “without a good faith belief as to the correctness of the statement or representation.” *See* Minn. Stat. § 268.18, subd. 2(a).

In the second determination, which concerned the issue of misrepresentation, the ULJ found that Padilla’s employer “offered him a severance payment equal to 14 weeks salary” if Padilla signed a separation agreement. The ULJ found that Padilla asked an attorney to review the separation agreement and that when Padilla answered the severance-pay question on the unemployment-benefits application, “he was unsure if he would receive separation pay because his attorney was still reviewing [the] separation agreement.” The ULJ found that Padilla later received a severance payment but did not report the payment to the department. The ULJ found that Padilla disclosed the severance payment only after the department began auditing his benefits account.

Based on these facts, the ULJ determined that it was “more likely than not that Padilla’s application report that he would not receive severance pay was made without a good faith belief as to the correctness of the response.” The ULJ reasoned that “Padilla offered no reasonable explanation for reporting that he would not receive severance when he was actually unsure if he would receive [it] and he had an option to report that he was

unsure.” The ULJ further reasoned that “Padilla offered no reasonable explanation for failing to report his severance pay at the time he received it when he knew, or should have known, that [the department] wanted to know about potential severance pay after he filled out his application for unemployment benefits.”

The evidence in the agency record supports the ULJ’s findings. Padilla testified that he received the separation agreement on March 1, 2019, that he signed and returned the agreement during the third week of March, and that he received the severance payment on March 29, 2019. He also testified that he applied for unemployment benefits during the first week of March and explained that he answered “NO” to the severance-pay question because “I was having the separation agreement reviewed by a lawyer so I wasn’t sure if I was gonna receive payment or not.” When asked by the ULJ why he did not instead select “NOT SURE,” Padilla answered, “Yeah, I guess I could have.” This evidence supports the ULJ’s finding that Padilla “knowingly and willfully misrepresented or misstated material facts to obtain benefits.” *See Burnevik*, 367 N.W.2d at 683.

Padilla challenges the ULJ’s finding that he made a misrepresentation by arguing that he “was not informed that certain types of separation payments can cause ineligibility for unemployment benefits until months after applying for and receiving benefit payments.” He argues further that, as a general matter, “applicants should be advised to meet in person with a [department-employed] counselor to review” issues such as how severance pay can affect eligibility.

Padilla provides no legal authority for the proposition that the department had a duty to inform him of the reasons for the questions on the application and the potential

consequences of his responses to those questions. We note, however, that the key question was in a section of the application with the heading “Eligibility Information,” which should have allowed Padilla to understand that the information sought would be used to determine his eligibility for benefits. Furthermore, the question used plain language in asking, “Have you received, or do you expect to receive, any of the following upon separation from employment: Severance or any other separation payments?” The application provided a choice among three possible answers: “YES,” “NO,” or “NOT SURE.” The meaning of each of those potential answers is clear. Even if an applicant does not have a full understanding of the department’s reasons for asking the question, the applicant should know how to answer the question truthfully. Padilla was not entitled to any additional information concerning the consequences of receiving severance payments. With respect to Padilla’s suggestion that the department should advise applicants to meet with a department employee for an individualized consultation, we are aware of no legal authority requiring such action by the agency.

Thus, the ULJ did not err by finding that Padilla did not have a good-faith belief in the accuracy of his statement that he did not expect to receive severance pay. Therefore, the ULJ did not err by determining that Padilla made a misrepresentation and that he is subject to a mandatory penalty.

Affirmed.