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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0131**

In the Matter of: Raymond Semler.

**Filed November 1, 2021
Affirmed
Bryan, Judge**

Department of Employment and Economic Security
File No. 41074083-3

Raymond L. Semler, Moose Lake, Minnesota (pro se relator)

Keri Phillips, Anne Froelich, Minnesota Department of Employment and Economic Security, St. Paul, Minnesota (for respondent department)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from a determination of ineligibility for Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC), relator argues that the unemployment law judge (ULJ) erred in finding that a policy violation, and not the COVID-19 pandemic, resulted in relator's separation from employment. Because substantial evidence in the record supports this finding, we affirm.

FACTS

Pro se relator Raymond Semler has been civilly committed at a Minnesota Sex Offender Program (MSOP) facility since 2006. As part of a vocational work program at MSOP, Semler worked a few hours per week as a janitor until his employment ended in May 2020. Semler applied for unemployment benefits and began receiving PUA and FPUC payments through the Minnesota unemployment insurance program. On June 4, 2020, Respondent Department of Employment and Economic Security (DEED) determined that Semler was ineligible for PUA and FPUC because he was suspended because of a policy violation and not the COVID-19 pandemic. Semler appealed, and the ULJ held a hearing on September 16, 2020.

At the hearing, the ULJ received seven exhibits, including a copy of Semler's application for unemployment benefits. In the application, Semler stated that his last day of work was May 14, 2020. The application asked Semler to identify the reason for separation from his employer. Semler marked the answer on the form, stating that the separation stemmed from disciplinary action. Specifically, the answer Semler selected on his application states: "Suspension: Your employer will temporarily not allow you to work. For example: Pending an investigation or disciplinary action." A different option on the application applies when the separation resulted from the pandemic: "COVID-19: You are currently unemployed or your hours were reduced as a direct or indirect result of COVID-19/ Coronavirus." Semler did not select this option as a cause of his separation from employment. In a separate portion of the application, Semler provided the reason for his separation from employment a second time. Semler selected the option that pertains to

disciplinary action, which states, “Policy violation or behavior.” On the next clarifying question on the application, Semler again selected the option that relates to disciplinary action: “My employer said I was suspended because I misreported/falsified the hours I worked, my productivity, my expenses, or some other document related to the employment.”

The ULJ also received an exhibit containing a May 14, 2020 letter that MSOP sent Semler, which stated:

As you are aware, on 5/5/2020 it was reported you finished completing your assigned cleaning tasks . . . at 9:15pm, but you documented on your timesheet that you participated in vocational tasks from 8:55pm to 9:40pm. When unit staff questioned the times you documented on your time sheet, you stated it was fine. This is considered falsification on your timecard and will not be tolerated.

The letter also informed Semler that MSOP suspended him from all vocational programming for a minimum of 90 days. When the ULJ then questioned Semler about the May 14, 2020 suspension letter, Semler testified that he received the letter, but that the incident took place before March 24, 2020. Semler testified that the reason for a later date on the letter was because “it had taken that long for an audit . . . to come up.” Semler also testified that the reason he filled out the application as he did was because he was relying on the May 14, 2020 letter, and that he was confused about how to answer the questions.

Missing from the exhibits was a portion of a fax Semler attempted to send to the ULJ. The fax contained a March 24, 2020 memo from MSOP in response to the COVID-19 pandemic. When the ULJ could not find this document in the record, the ULJ suggested that Semler read the memo into the record and that Semler could send the memo to the ULJ

after the hearing.¹ Semler agreed to proceed in that fashion and read the “most important part” of the memo into the record:

As we are all aware, the information coming out about the COVID19 pandemic continues to change rapidly. This not only includes the number of cases being reported in the community, but also new mandates to limit social and other non-essential gatherings. With this in mind, effective today, our own MSOP-ML Moose Lake community is temporarily suspending open movement and instituting controlled movement; requiring clients to leave units through a call-out process. Clients who participate in the vocational shop and all other work-for-pay duties will continue, with the exception of any work done on other units, the music room and clerk positions. Client kitchen workers (who are not symptom positive) will be allowed to work.

Semler testified that because he fit within the category of “work done on other units,” the memo demonstrated that he was furloughed due to the pandemic. Semler also testified that he did not work after receiving the memo on March 24, 2020.

On September 18, 2020, the ULJ issued its findings of fact and decision. The ULJ found that on May 14, 2020, “Semler was removed from all vocational programming at MSOP for at least 90 days, because of what the vocational supervisor believed was a timecard violation Semler had committed.” The ULJ also found that Semler’s testimony that he did not work after March 24, 2020, was not credible. According to the ULJ, this testimony contradicted evidence relating to the May 14, 2020 letter of suspension and

¹ At the end of the hearing, the ULJ agreed to hold the record open until the end of the following day to allow Semler the opportunity to submit the March 24, 2020 memo so that it could be included as part of the evidence. Semler submitted an affidavit stating that the March 24, 2020 memo states that he was furloughed on March 24, 2020, due to the pandemic, but did not submit the actual memo. Semler requested an extension, but the ULJ declined to grant Semler’s request.

Semler's application answers indicating that he was suspended because of an alleged misrepresentation of hours worked on May 5, 2020. The ULJ found that Semler did not provide any reasonable explanation for the discrepancy between his testimony and his written answers on the questionnaire. The ULJ determined that Semler's explanation was "implausible" because the May 14, 2020 letter makes no reference to any date in March and refers only to May 5, 2020. The ULJ further stated that, in the alternative, even if it believed Semler's testimony that he was furloughed as a direct result of the pandemic, Semler was unavailable for suitable employment because Semler is confined at MSOP and is therefore restricted from accepting or performing any employment outside the facility.² Accordingly, the ULJ determined that Semler was ineligible for PUA and FPUC.

On September 24, 2020, Semler requested reconsideration and an additional evidentiary hearing. Semler submitted the March 24, 2020 memo, which contains substantially the same information Semler read into the record at the hearing. The ULJ declined to hold an additional hearing and affirmed its decision. This appeal follows.

DECISION

Semler argues that substantial evidence does not support the ULJ's finding regarding what caused his separation.³ We conclude that substantial evidence supports the finding that Semler's unemployment resulted from a policy violation and not the pandemic.

² Because Semler does not challenge the ULJ's alternative determination that Semler was not available for suitable employment, and because we affirm the finding that Semler's separation from employment resulted from a policy violation and not the pandemic, we need not review the ULJ's alternative determination.

³ Relying solely on the March 24, 2020 memo, Semler also argues that this court must reverse the ULJ's decision because the ULJ did not assist him with the presentation of

Section 2102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), authorizes PUA payments to “covered individuals.” A “covered individual” includes, in relevant part, an individual who “is not eligible for regular compensation or extended benefits under State or Federal law,” “is otherwise able to work and available for work within the meaning of applicable State law,” and “is unemployed, partially unemployed, or unable or unavailable to work” as a result of one of the 11, pandemic-related reasons enumerated in Section 2102. CARES Act § 2102(a)(3) (2020). An individual who meets these requirements is also eligible for FPUC benefits. CARES Act §§ 2102(d)(1)(A)(ii), 2104(b)(1)(B) (2020).

State law applies to the administration of PUA payments and “[t]he provisions of the applicable state law that apply to claims for PUA include,” in relevant part, “[d]eterminations, redeterminations, appeals, and hearings.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) at I-9; 20 C.F.R. 625.11. Thus, the PUA and FPUC incorporate Minnesota Statutes sections 268.001-.23 (2020), which govern this court’s review of administrative unemployment decisions.

evidence and because the ULJ declined to hold an additional evidentiary hearing. Semler, however, does not develop any argument explaining how the alleged errors prejudiced his substantial rights in light of the undisputed fact that Semler read the “most important part” of the March 24, 2020 memo into the record and because the ULJ agreed to hold the record open to permit Semler to supplement the record with the March 24, 2020 memo. We discern no obvious prejudice and decline to address the issue. *See State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an inadequately briefed issue); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived.”); *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530 (Minn. App. 2007) (rejecting the relator’s argument of an unfair hearing in the absence of prejudice).

Pursuant to chapter 268, this court reviews the decision of the ULJ to determine whether its factual findings are supported “by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d)(5) (2020). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 66 (Minn. App. 2016) (quotation omitted). In addition, we review “findings of fact in the light most favorable to the ULJ’s decision.” *Fay v. Dep’t of Emp’t & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015).

In this case, the information Semler provided in his application for unemployment benefits and the May 14, 2020 suspension letter support the ULJ’s finding that Semler’s separation from unemployment was not caused by the COVID-19 pandemic and does not satisfy the pandemic-related requirements of the PUA and FPUC. In his application, Semler declared in three separate answers that his separation from employment resulted from a policy violation. Specifically, Semler stated that falsification of the number of hours worked caused his suspension. The May 14, 2020 suspension letter corroborates these answers, stating that Semler was suspended because he misrepresented the number of hours he worked on May 5, 2020. We conclude that substantial evidence supports the ULJ’s finding because a reasonable mind could believe the statements on Semler’s application and in the May 14, 2020 suspension letter. *See Posey*, 879 N.W.2d at 667.

Although Semler testified that he interpreted the March 24, 2020 memo as proof that his suspension was pandemic-related, we are not convinced that the ULJ erred for two reasons. First, the memo itself does not establish that Semler was separated from employment. The March 24, 2020 memo states, “Clients who participate in the vocational

shop and all other work-for-pay duties will continue, with the exception of any work done on other units, the music room and clerk positions.” The memo contemplates the ability of some to continue working despite the pandemic, just as Semler continued to do.

Second, we cannot accept Semler’s argument because it requires us to disregard the ULJ’s credibility determinations and to reweigh conflicting evidence. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (holding that appellate courts do not reweigh evidence on appeal); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (holding that we defer to the ULJ’s credibility determinations on appellate review). The ULJ discounted Semler’s testimony, and—as required by Minnesota Statutes section 268.105, subdivision 1a—the ULJ explained why: Semler’s testimony contradicted evidence from Semler’s application for unemployment benefits and from the May 14, 2020 suspension letter. Semler did not provide any reasonable explanation for this discrepancy. We cannot agree with Semler that the March 24, 2020 memo proves his separation was pandemic-related without ignoring the exception noted in the memo and disregarding the scope of our review.

Affirmed.