

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1442**

In the Matter of: Eden Tesfaye.

**Filed June 6, 2022
Remanded
Slieter, Judge**

Department of Employment and Economic Development
File No. 46109810-6

Eden Tesfaye, Eagan, Minnesota (*pro se* relator)

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

Masterson Staffing Solutions, Bloomington, Minnesota (respondent employer)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator challenges a decision by an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits. Relator initially received benefits but, after her employment authorization document (EAD) expired, a ULJ determined relator was

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

ineligible for benefits. In the interests of justice, we consider for the first time that relator's application for extension of her work authorization automatically extended her eligibility for unemployment benefits. We remand to the ULJ to consider its impact on relator's eligibility for benefits.

FACTS

From February 2019 to March 2020, relator Eden Tesfaye worked for respondent Masterson Staffing Solutions. Tesfaye is a lawful permanent resident who possessed an EAD allowing her to work in the United States. After Masterson ended her employment in March 2020, Tesfaye applied for unemployment benefits with respondent, Minnesota Department of Employment and Economic Development (DEED).

Upon application for unemployment benefits and as required as a non-citizen, Tesfaye provided DEED a copy of her EAD. According to DEED, she then collected regular state unemployment benefits, and, after her state benefits ended, she solely received federal pandemic emergency unemployment compensation (PEUC) benefits from April 5, 2020 to April 24, 2021.

Because her existing EAD was to expire on January 1, 2021, Tesfaye applied for a new EAD from the U.S. Department of Homeland Security (DHS) in November 2020. Before her EAD expired, Tesfaye received a notice from DHS, dated November 23, 2020, that it received her renewal application (known as a Form I-797C, Notice of Action). The renewal process was delayed because of the pandemic.

On May 3, 2021, DEED mailed Tesfaye a determination of ineligibility, stating that she was ineligible for benefits beginning April 11, 2021, because she was unauthorized to

work in the United States due to the expiration of her existing EAD. DEED also determined that it overpaid Tesfaye \$954 in benefits.

Tesfaye appealed the determination of ineligibility. Without a hearing, a ULJ affirmed Tesfaye's ineligibility. Tesfaye requested reconsideration and the ULJ held an evidentiary hearing during which Tesfaye provided the only testimony. The ULJ again affirmed Tesfaye's ineligibility due to the expired EAD. Tesfaye again requested reconsideration and the ULJ, upon reconsideration without another hearing, affirmed her ineligibility.¹ Tesfaye appeals by writ of certiorari.

DECISION

When reviewing a ULJ's decision, we may reverse, remand, or modify a ULJ's decision if it reflects an error of law and prejudices an applicant's substantial rights. Minn. Stat. § 268.105, subd. 7(d)(4) (2020). "We review de novo a ULJ's determination that an applicant is ineligible for unemployment benefits." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 30 (Minn. App. 2012). We "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *rev. denied* (Minn. Oct. 1, 2008). We view the ULJ's findings of fact in the light most favorable to the decision, deferring to the ULJ's credibility determinations. *Id.*

¹ Tesfaye submitted a copy of her new EAD on October 21, 2021. On October 25, 2021, the ULJ determined, in its denial of Tesfaye's request for reconsideration, that Tesfaye was again eligible for benefits, effective October 21, 2021. The ULJ thus determined that Tesfaye was ineligible for unemployment benefits from April 11, 2020 to October 20, 2021.

An immigrant is ineligible for unemployment benefits for any week the immigrant is unauthorized to work in the United States. Minn. Stat. § 268.085, subd. 12(a) (2020).² “Information from the Bureau of Citizenship and Immigration Services is conclusive, absent specific evidence that the information was erroneous.” *Id.*

For the first time on appeal, Tesfaye argues that the Form I-797C, Notice of Action, she received after submitting her EAD-renewal application automatically extended her work authorization for 180 days. Generally, we do not consider arguments not presented to and considered by the ULJ. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) (applying *Thiele* in a certiorari appeal). But this rule is not “ironclad,” *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (quotation omitted), and we may address new issues on appeal “as the interest of justice may require,” Minn. R. Civ. App. P. 103.04.

We conclude that the interests of justice require our consideration of Tesfaye’s claim that her Form I-797C, Notice of Action, extended her work authorization for 180 days. Though the ULJ did not previously receive a copy of Tesfaye’s Form I-797C, Notice of Action, the purposes of the unemployment-insurance program support our remand. Minn. Stat. § 268.03 (2020) (“The public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed.”). Further, the unemployment-insurance statute directs us and the ULJ to construe statutes “in favor of awarding unemployment

² An immigrant unauthorized to work in the United States is similarly barred from receiving PEUC benefits. 15 U.S.C.A. § 9025(a)(4)(B) (West Supp. 2021).

benefits” and narrowly construe provisions precluding an applicant from receiving benefits. Minn. Stat. § 268.031, subd. 2 (2020).

We therefore remand to the ULJ to consider the Form I-797C, Notice of Action, as part of Tesfaye’s request for reconsideration pursuant to Minn. Stat. § 268.105, subd. 2 (2020). We agree with the argument of DEED that, upon remand, the ULJ may determine whether the automatic extension applies to Tesfaye.

Remanded.