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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1594**

In re the Matter of: Matthew Chandler

**Filed August 15, 2022  
Affirmed  
Bryan, Judge**

Department of Employment and Economic Development  
File No. 46331691-4

Craig A. Brandt, Megan J. Renslow, Moss & Barnett, Minneapolis, Minnesota (for relator Matthew Chandler)

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

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Klaphake, Judge.\*

**NONPRECEDENTIAL OPINION**

**BRYAN, Judge**

Relator appeals the unemployment law judge's (ULJ) decision that he is ineligible for Pandemic Unemployment Assistance (PUA). More specifically, relator contests the ULJ's determination that the COVID-19 pandemic did not cause relator's asserted change in employment. Because the ULJ's analysis of causation was based on a credibility determination, we defer to the ULJ and affirm the decision denying PUA.

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

## FACTS

On May 10, 2020, relator Matthew Chandler applied for regular unemployment benefits. Respondent Department of Employment and Economic Development (DEED) determined Chandler did not qualify for regular unemployment benefits because he had not earned sufficient wages in his base period. Chandler also applied for PUA. DEED determined that Chandler was also ineligible for PUA starting May 10, 2020, because the COVID-19 pandemic did not result in Chandler's unemployment. Chandler appealed the initial determination and proceeded to a hearing.

At the evidentiary hearing, Chandler testified that in the last two years, he was a self-employed handyman who also did lawncare and snow removal. He stated that he applied for unemployment benefits because he "wasn't an essential worker," and "couldn't even go out of the house without getting a ticket." Before the pandemic, he explained that he obtained work by going door-to-door, asking residents if they had any work for him. Chandler testified that before the pandemic, he worked "probably 35, 40 hours a week, maybe more sometimes, maybe less," but "an average of 40," including the time looking for work. In his testimony, he claimed to earn a monthly income of \$3,000.

Chandler also testified that since the onset of the pandemic, "nobody would answer the doors anymore," so he was unable to find work. He explained, "it's really not easy anymore, because people don't like to answer the doors. I mean, they talk to me through the door and stuff but I mean, I still go out every day and look for work, but I haven't been able to find much work lately." Chandler testified that after the stay-at-home order was

lifted, he still tried to get jobs door-to-door, but people were “wary about even letting anybody into their home, or into their yard even.”

When asked whether he tried other ways of looking for work, Chandler replied that he had not made changes to his job-seeking methods. He also acknowledged that it was harder for him to find jobs outside of his immediate neighborhood now because he no longer has a car. Chandler testified that he did not look for jobs using websites like Craigslist because “I like to stick to my handyman self-employment because I seem to make a lot of money that way.” When asked for documentation that could corroborate his testimony regarding his income and the jobs he obtained before the pandemic, Chandler said he had some receipts, but he had no documentation for most jobs. The ULJ held the record open for Chandler to submit tax documentation of his income before the pandemic. Chandler submitted a copy of a page from an unofficial, 2019 federal income tax document. The tax form submitted to the ULJ showed a total annual income of \$13,000 for 2019, before the pandemic.

The ULJ issued findings of fact and decision, disbelieving Chandler’s testimony and finding Chandler ineligible for PUA:

Despite Chandler’s claims, the [ULJ] did not find Chandler’s testimony about the amount of work he performed prior to the pandemic or that he has not been able to find any work since the start of the pandemic credible because it was vague and not probable and because it conflicted, at times, with the information Chandler provided to the Department when he first applied for unemployment benefits . . . . The [ULJ] also did not find Chandler’s testimony that he has not been able to find any work at all since the start of the pandemic credible because it is not plausible. It is highly unlikely that individuals are still unwilling to let Chandler mow their lawns or come into

their homes due to safety concerns as case numbers decline and vaccination rates increase.

Chandler filed a request for reconsideration and the ULJ issued an order of affirmation, determining that the initial determination was correct and concluding that the added documentation submitted by Chandler with his request for reconsideration did not demonstrate that he had steady work before the pandemic. Chandler appeals.

### **DECISION**

Chandler challenges the ineligibility determination, arguing that the ULJ erred in finding that the pandemic did not cause a change in Chandler's employment.<sup>1</sup> Because the error specifically relates to the ULJ's decision to disregard Chandler's testimony regarding his change in employment and what caused his change in employment, this argument raises a challenge to the ULJ's credibility determinations. We defer to the ULJ's credibility determinations and affirm the ULJ's findings.

The relevant portions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) are codified at 15 U.S.C. §§ 9021-9034 (2020) and authorize PUA payments to "covered individuals." 15 U.S.C. § 9021(a)(3). A "covered individual" includes, in relevant part, an individual who "is not eligible for regular compensation or extended

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<sup>1</sup> Chandler's brief includes a section arguing that as a matter of law, PUA extends to independent contractors. *See Matter of Muse*, 956 N.W.2d 1, 6 (Minn. App. 2021) (observing that although state unemployment law bars "gig economy workers" and independent contractors from eligibility for regular unemployment benefits, such workers are not categorically disqualified from eligibility for PUA.) Because Chandler acknowledges that a causal link between the pandemic and an asserted employment change is still required, even for independent contractors, and because we affirm the ULJ's factual determination that the pandemic did not cause a change in Chandler's employment, we need not address any legal argument regarding independent contractors.

benefits under State or Federal law,” “is otherwise able to work and available to 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 9021. *Id.* Chandler argues he is eligible because one of the pandemic-related reasons enumerated in Section 9021 covers individuals who are “unemployed, partially unemployed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing the individual’s customary work activities and has thereby forced the individual to suspend such activities.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (Apr. 5, 2020) at I-6; *see also* 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk).

Pursuant to the applicable standards of review, we determine whether the ULJ’s factual findings are supported “by substantial evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d)(5) (2020).<sup>2</sup> “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, this court reviews “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.

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<sup>2</sup> 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 (Apr. 5, 2020) at I-9; 20 C.F.R. 625.11 (2020). Thus, the PUA program incorporates, inter alia, Minnesota Statutes sections 268.105, subd. 7(d) (2020), which governs this court’s review of administrative unemployment decisions. Pursuant to that statute, this court determines whether factual findings are supported by substantial evidence.

2015). An applicant's entitlement to unemployment benefits must be determined based upon the information available without regard to a burden of proof. Minn. Stat. § 268.069, subd. 2 (2020). Importantly, we must defer to the ULJ's credibility determinations. *See Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (holding that this court defers to the ULJ's credibility determinations on appellate review); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (holding that appellate courts do not reweigh evidence on appeal).

Chandler disputes the factual finding that his inability to work was not a result of the COVID-19 pandemic, arguing that the ULJ erred when it did not credit his testimony relating to what caused his change in employment. Because we must defer to the ULJ's credibility determinations, we do not accept Chandler's argument. The ULJ made an adverse credibility determination regarding Chandler's testimony in several key respects. For example, the ULJ did not believe Chandler's testimony regarding his pre-pandemic income; the effectiveness of his pre-pandemic job-seeking efforts; his present inability to find work, and the stated cause of his present inability to find work. The ULJ's decision not to give much, if any, weight to Chandler's testimony regarding his pre-pandemic income is supported by the discrepancy between Chandler's testimony that he earned \$3,000 monthly in 2019 and the supplemental income tax document showing a total of only \$13,000 in gross annual income for that year. In addition, Chandler testified that he did not keep receipts or documentation of his work pre-pandemic so there is no way to use such documentation to corroborate his testimony.

The ULJ further explained its adverse credibility determination, characterizing Chandler’s testimony regarding causation as “vague” and “not plausible.”<sup>3</sup> The testimony that because of the pandemic, “nobody would answer the doors anymore” and people refuse to allow “anybody into their home, or into their yard even” is vague. It is also a sweeping, speculative statement applying to all residents and potential customers. The ULJ has discretion to use its own judgment and common sense when weighing credibility. *See Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532–33 (Minn. App. 2007) (stating that ULJs may rely on a variety of factors when assessing witness credibility, including the witness’s interest in the outcome of the case, the believability of the facts asserted by the witness, and the ULJ’s own good judgment, and common sense).

Finally, portions of Chandler’s testimony undercut his beliefs regarding the cause of the changes to his employment. When asked whether he used any new or different methods to obtain work, including using websites to solicit work, Chandler testified that he had not made any changes to his job-seeking methods and that because he no longer has

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<sup>3</sup> To the extent that any part of Chandler’s brief can be construed to argue that the ULJ improperly took judicial notice of certain facts—including declining COVID cases and rising vaccination rates during the spring and summer of 2021—we discern no prejudicial error. Respondent concedes that there was no testimony regarding cases or vaccination rates. However, because Chandler does not explain how the reference to case and vaccination rates in the ULJ’s decision affected the outcome of the proceeding, we need not determine whether the ULJ erred in referring to case and vaccination trends. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1974) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.”); *see also State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach inadequately briefed issue); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (declining to reach issue in the absence of prejudicial error).

a car, he can only look for jobs in one specific neighborhood. This testimony suggests that Chandler's purported change in income could be the result of not having a car anymore or of refusing to try a variety of job-seeking methods.

For these reasons, the ULJ discounted Chandler's testimony that he experienced a change in employment as a result of the pandemic. We defer to these credibility determinations and conclude that the ULJ did not err in making its factual findings.

**Affirmed.**