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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1492**

Rachel Eberhard,
Relator,

vs.

Department of Employment
and Economic Development,
Respondent.

**Filed May 3, 2011
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 24944716-2

Rachel R. Eberhard, St. Paul, Minnesota (pro se relator)

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

Considered and decided by Hudson, Presiding Judge; Toussaint, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator Rachel Eberhard disputes an unemployment law judge's (ULJ) calculation of the amount of earnings she has attained to meet an undisputed determination that she

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

must earn \$1,448 to reestablish her eligibility after quitting a job without cause. Because the record supports the ULJ's findings that she earned no more than \$1,211, we affirm.

FACTS

Relator quit her employment at Medtox Laboratories, Inc. in March 2009. She established an unemployment benefit account with respondent Department of Employment and Economic Development (the department) in June 2009, but in July the department determined that she was ineligible to receive benefits. Relator did not dispute this decision or the additional determination that she needed to earn \$1,448 (eight times her weekly benefit amount) in subsequent covered employment to reestablish her eligibility for benefits.

Relator worked for the White Bear Lake Lions Club Charitable Gambling Committee between August and December 2009. On December 20, 2009, she filed a new application for unemployment benefits. The department reported to her that the Lion's Club had reported her total earnings, including tips, as \$1,211, which was over \$200 short of the amount required to reestablish her eligibility. After learning this, relator appealed the department's calculation, arguing that she had earned an additional \$309 in tips that she had never reported to the Lion's Club.

At the hearing before the ULJ, relator testified that she was instructed by her employer to cap her tip reports and that she never disclosed to the employer that the tip reports were in error. The ULJ inquired on several occasions if relator had any witnesses or statements from co-employees stating that they were told to falsely report the amount of tips, and each time relator indicated that she had nothing else to present.

The ULJ's subsequent decision determines that tips relator did not report in the ordinary course of business, with no showing of good cause for failing to report or delaying reports, could not be used to reestablish her eligibility. The order notes that wages, defined by statute as those actually paid or set aside for payment, include tips "accounted for by the employee to the employer." Minn. Stat. § 268.035, subds. 29(a), 30(a) (2008).

The ULJ found that relator's claim that her employer directed underreporting of tips was not credible. The findings recite the absence of evidence to corroborate her claim, her failure to provide documentation that she said was available on her actual tips received, and gaps and inconsistencies in her testimony. The ULJ also found that there was insufficient evidence to show that relator was told by tax authorities that she could repair her underreporting with later, amended tax forms.

This appeal follows denial of relator's petition to the ULJ for reconsideration.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of relator have been prejudiced because the findings or conclusions are arbitrary, affected by errors of law, or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(4)-(16) (2010).

"This court views the ULJ's factual findings in the light most favorable to the decision." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). We are not to disturb the findings when they are

substantially sustained by the evidence. *Id.* “When the credibility of an involved party or witness testifying in an evidentiary 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. 1(c) (Supp. 2009).

On appeal, relator challenges the finding that she had no good cause for underreporting her tips, emphasizing that she followed specific instructions from her employer. This argument is unavailing because we must defer to the ULJ’s inferences and credibility determinations. *Ywsfw v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (inferences); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (credibility determinations). Our review of the record establishes that the ULJ’s findings, particularly on the absence of good cause for relator’s failure to report alleged tips, are supported by substantial evidence.

Relator also contends that had the department performed a more intensive investigation, “a pattern of employees not reporting their tips would have been discovered and [her] case would have been proven.” But relator does not disclose any further evidence of this pattern that has not been heard and considered. She also argues that she should not be denied unemployment benefits when she amended her tax forms to include as income \$309 in additional unreported tips, but she fails to demonstrate any legal impact of these tax filings on the unemployment law determination. We cannot resolve issues in the absence of briefing that adequately addresses them. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135

(1971) (stating that an assignment of error based on mere assertion and unsupported by argument or authority waived unless prejudicial error is obvious).

Relator contends that the ULJ's decision is "unjust and wrong," but she has no equitable or common-law right to benefits independent of the statutorily created system for unemployment benefits. Minn. Stat. § 268.069, subd. 3 (2008).

Relator also challenges the ULJ's failure to consider additional evidence submitted with her request for reconsideration, but reconsideration on evidence not originally presented at the evidentiary hearing is prohibited by statute. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009) (barring reconsideration based on evidence not submitted at the evidentiary hearing). The statute permits considering whether additional evidence demands an additional evidentiary hearing because the evidence would likely change the outcome and there was good cause for not previously submitting it, or because the additional evidence would show that evidence submitted at the evidentiary hearing, affecting the outcome, was likely false. *Id.* This court defers to the ULJ's decision not to order an additional evidentiary hearing and will reverse that decision only for an abuse of discretion. *Skarhus*, 721 N.W.2d at 345. Relator stated in her request for reconsideration that she now has testimony from an unidentified coworker, but she did not explain how this new testimony would affect the outcome of the ULJ's decision.

The ULJ did not err by determining that the department correctly calculated relator's Lions Club earnings between August and December 2009.

Affirmed.