

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1773**

Carla Misfeldt,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 31, 2011
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 25121051-2

Carla Misfeldt, Brooklyn Park, Minnesota (pro se relator)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Muehlberg,
Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

The Department of Employment and Economic Development (DEED) determined that Carla Misfeldt is eligible for unemployment benefits and, accordingly, paid her \$264 in benefits. One day later, DEED realized that it had made a mistake and issued an amended determination, which stated that Misfeldt is ineligible. An unemployment law judge (ULJ) later determined that Misfeldt received an overpayment of benefits and must return the \$264 to DEED. We affirm.

FACTS

Misfeldt applied for unemployment benefits in April 2009. On June 1, 2009, DEED sent Misfeldt a determination of benefits account, which stated that Misfeldt was entitled to a weekly benefit of \$44. That determination triggered a \$264 payment to Misfeldt for the six-week period during which her application had been pending. The next day, however, DEED issued an amended determination, which stated that Misfeldt was ineligible to receive unemployment benefits. DEED corrected its prior determination because it had calculated Misfeldt's eligibility based on an incorrect base period, which caused DEED to incorrectly determine that Misfeldt had earned sufficient wage credits to establish a benefits account. This court previously affirmed a ULJ's determination that Misfeldt did not earn sufficient wage credits during the relevant base period. *Misfeldt v. Department of Employment & Econ. Dev.*, No. A09-2095, 2010 WL 3000213, at *3 (Minn. App. Aug. 3, 2010).

In May 2010, while Misfeldt's previous appeal to this court was pending, a ULJ issued a decision stating that Misfeldt had been overpaid. That decision also states, however, that Misfeldt had received an overpayment "in the amount of \$0.00." On Misfeldt's request for reconsideration, the ULJ clarified in September 2010 that "Misfeldt was overpaid \$264, which she must repay the Department." Misfeldt appeals the September 2010 decision by way of a writ of certiorari.

D E C I S I O N

Misfeldt argues that the ULJ erred by determining that DEED made an overpayment of \$264 and that she must repay that amount to DEED. This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008). We apply a *de novo* standard of review to a ULJ's interpretation of the unemployment statutes. *Abdi v. Department of Employment & Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. App. 2008).

Misfeldt argues that DEED is not entitled to a repayment of \$264. She asserts that by depositing money into her account, DEED made an "admission that I have a valid account" and, presumably, an admission that she is entitled to retain the money she received. We will not reconsider our prior opinion concerning Misfeldt's benefits account, which concluded that she did not earn sufficient wage credits in the relevant base period to be eligible for benefits. *Misfeldt*, 2010 WL 3000213, at *3. Thus, the only issue is whether, in light of her ineligibility for the benefits she received, the ULJ erred by requiring Misfeldt to repay \$264 in benefits to DEED.

Misfeldt's argument is contrary to law. The legislature provided that DEED "may issue a determination on an issue of ineligibility at any time within 24 months from the establishment of a benefit account based upon information from any source, even if the issue of ineligibility was not raised by the [employee] or an employer." Minn. Stat. § 268.101, subd. 2(e) (2008). This statute permits DEED, on its own initiative, to declare Misfeldt ineligible for benefits even though it had declared her eligible in a previous determination. In addition, if DEED determines that a person is ineligible for unemployment benefits, any benefit amounts previously paid to that person constitute an overpayment. Minn. Stat. § 268.105, subd. 3a(b) (2008). Furthermore, an employee who has received an overpayment "must promptly repay the unemployment benefits." Minn. Stat. § 268.18, subd. 1(a) (2008).

In sum, Misfeldt received an overpayment of \$264 because she is ineligible for unemployment benefits. An overpayment must be returned. Thus, the ULJ did not err by determining that Misfeldt must make repayment to DEED in the amount of \$264.

Affirmed.