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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1943**

Wesley Box,  
Respondent,

vs.

Cantina #1 at MOA, LLC,  
Relator,  
Department of Employment and Economic Development,  
Respondent.

**Filed May 31, 2011  
Affirmed  
Stoneburner, Judge**

Department of Employment and Economic Development  
File No. 25656359-3

Wesley Box, Shakopee, Minnesota (pro se respondent)

Justin A. Johnson, Tim Kaine, Lockwood Law Office, Roseville, Minnesota (for relator)

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

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Because relator, the former employer of an applicant for unemployment benefits,  
failed to appear at a telephone hearing on its appeal of a determination that its former

employee was eligible for benefits, the appeal was dismissed. The employer requested reconsideration and an additional evidentiary hearing without explaining why it failed to appear at the initial hearing. The unemployment-law judge (ULJ) denied relator's request for an additional evidentiary hearing and affirmed dismissal of the appeal. In this appeal by writ of certiorari, the employer asserts that the ULJ abused its discretion by failing to schedule an additional hearing and argues that the employee was discharged for aggravated employment misconduct, or, in the alternative, employment misconduct, making him ineligible for unemployment benefits. Because, on this record, the ULJ did not abuse its discretion in denying an additional hearing and dismissing the appeal, we affirm.

## **FACTS**

After relator, Cantina #1 at MOA LLC (Cantina), discharged respondent Wesley Box from employment, Box applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Box was eligible for unemployment benefits.

Cantina appealed the eligibility determination and requested an evidentiary hearing. A telephone hearing was scheduled, and notice of the hearing was mailed to Cantina. Cantina faxed information to DEED, alleging that \$22,570.41 in company funds had not been properly deposited into certain bank accounts during the time that Box was employed by Cantina and that Box was "the only person responsible for depositing funds." The fax included a spreadsheet documenting monthly sales and deposits showing that sometimes too little money was deposited and sometimes too much money was

deposited. Cantina did not explain how the spreadsheet supported its allegations against Box. Cantina failed to appear at the hearing, and the ULJ dismissed the appeal.

Cantina requested reconsideration, stating that “[t]he reason we are filing is that there is a current investigation with the Bloomington Police Department regarding the theft of \$22,000 from Cantina #1 by the applicant.” The reconsideration request contains a handwritten note in the top corner stating “didn’t read mail in time.”

Cantina then submitted additional documents, including a purported settlement agreement between Cantina and Box regarding the underlying dispute and a letter from Box to “the State of Minnesota,” stating that he is “voluntarily resigning [his] rights to the unemployment benefits.” One month after the case was dismissed, Cantina also submitted a police report that essentially restates the allegations made by Cantina. On appeal, Cantina argues that the ULJ abused his discretion in denying an additional hearing and that even without an additional hearing, the record does not support the ULJ’s conclusion that Box did not engage in employment misconduct.

## **D E C I S I O N**

When an appealing party fails to participate in the hearing, the ULJ “has the discretion to dismiss the appeal by summary order.” Minn. Stat. § 268.105, subd. 1(d) (2010). A ULJ’s decision to dismiss an unemployment-benefits appeal based on a relator’s failure to participate in the hearing is accorded deference by a reviewing court and will be reversed only when dismissal constitutes an abuse of discretion. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). The appealing party may request reconsideration and be granted a new hearing if the appealing party demonstrates

good cause for failing to participate in the scheduled hearing. *Id.* “Good cause” for missing a hearing is defined as “a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.*, subd. 2(d) (2010).

The only information Cantina presented concerning its failure to appear at the hearing is the handwritten notation on the reconsideration request implicitly indicating that it did not timely read the notice of the hearing. In this certiorari appeal, Cantina argues for the first time that: (1) Cantina “failed to receive timely notice of the date and time of the appeal hearing” and (2) despite failing to appear, Cantina participated through continued “submission of information to the Department.” But we decline to consider arguments not presented to the ULJ. *See Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988) (providing that appellate courts generally will not consider matters not received into evidence by the decision-maker). And we defer to the ULJ’s decision as to whether a party has demonstrated good cause for failing to participate in a hearing. *Skarhus*, 721 N.W.2d at 345.

On appeal, Cantina argues that, even without an additional evidentiary hearing, the ULJ should have ruled on reconsideration that Box committed misconduct because (1) Box did not sufficiently explain the discrepancy in the deposits; (2) Box had previously been arrested for an unrelated theft; (3) the Cantina employee handbook provides for discharge of an employee for theft; and (4) Box’s handling of the money was, at the least, negligent. But the ULJ determined that Cantina had not shown good cause for failing to appear at the hearing and dismissed Cantina’s appeal without reaching

the merits. Because we conclude that the ULJ did not abuse its discretion in dismissing the appeal, we also decline to address the merits of Cantina's argument that post-hearing submissions support its assertion that Box committed employment misconduct.

**Affirmed.**