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

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A11-272**

**A11-274**

**A11-275**

Vickie Schultz,  
Relator,

vs.

Independent School District #2180,  
Respondent (A11-272, A11-275),

Department of Employment and Economic Development,  
Respondent

**Filed January 3, 2012**

**Affirmed**

**Peterson, Judge**

Department of Employment and Economic Development  
File Nos. 26110952-3, 26333017-3

Douglas D. Kluver, Nelson Oyen Torvik, Montevideo, Minnesota (for relator)

Independent School District No. 2180, Maynard, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**PETERSON**, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that the overpayment in her account occurred due to fraud. Because the ULJ's factual determination that relator committed fraud ultimately rests on a credibility determination, and we defer to the ULJ's credibility determinations, we affirm.

### FACTS

Relator Vickie Schulz was employed full time as a music teacher until the end of the 2008-2009 school year, when her employment was reduced to half time. Relator established an unemployment-benefits account on July 12, 2009, with a weekly benefit amount of \$537. On July 31, 2009, respondent Minnesota Department of Employment and Economic Development (DEED) issued an ineligibility determination because relator was a seasonal educator and, therefore, presumptively ineligible for benefits during the summer months. Relator returned to work half time on August 31, 2009, when the 2009-2010 school year began.

When relator applied for benefits, she received a handbook, which she testified that she read. The handbook contains a section that describes an applicant's responsibility for reporting earnings when requesting benefits. The handbook states:

The law imposes substantial penalties—including criminal penalties—for failing to report that you are working, or for failing to report all of your earnings when requesting benefits.

Each time you request a benefit payment, you are asked if you worked. Answer "Yes" if you worked at all, including if:

it was the last week of your old job;  
you worked in a temporary job;  
you worked in a part-time job;  
you worked in self-employment;  
you worked in a job that is not in your usual  
occupation or industry;  
you worked in a job you had before you became  
unemployed;  
it was the first week that you returned to work.

If you worked, you will be asked the number of hours you worked.

Report the total hours from all types of work.  
If you worked 32 hours or more in a week, Minnesota  
law says you are not eligible for benefits for that week.

If you worked, you must report your total earnings (before  
deductions and taxes).

Beginning with the week of August 30, 2009, relator used an automated system to request benefits each week. The automated system displayed the following question: “Did you work or have a paid holiday during the reporting period listed above? This includes Full Time, Part Time, Temporary Work, Self Employment or Volunteer Work.” Most weeks, relator answered, “No,” even though she had worked half time as a music teacher. On six occasions, relator answered, “Yes,” and indicated that she had received income from substitute teaching.

In October 2010, DEED sent a questionnaire to respondent Independent School District No. 2180 to clarify relator’s income during the periods when she requested benefits. Based on the information provided by the district, relator was determined to be ineligible for benefits. DEED further determined that Relator had received overpayments

totaling \$20,076 for the period from August 30, 2009, to June 12, 2010.<sup>1</sup> DEED also determined that relator had fraudulently obtained benefits and assessed fraud penalties totaling \$5,010.60 for the period from August 30, 2009, until February 27, 2010.<sup>2</sup>

Relator appealed the ineligibility determination, and a telephone hearing was held before a ULJ. Relator disputed the fraud determination, but she did not dispute that she had worked half time for the school district and had received an overpayment of benefits.

The ULJ affirmed the ineligibility determination. The ULJ concluded that relator received total benefit overpayments of \$20,076 and concluded that relator committed fraud and was subject to a 40% penalty on the total overpayment. The ULJ found that relator was confused by the questions but could not have had a good-faith belief that answering, “No,” to the question, “Did you work?” was correct because relator knew that she was working half time as a music teacher, and she did not take reasonable steps to contact DEED to resolve her confusion. On relator’s request for reconsideration, the ULJ affirmed the initial decision, and this appeal follows.

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

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the

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<sup>1</sup> For reasons that are not clear from the record, relator’s case was split into five ineligibility determinations, rather than being processed as one case arising from a single continuous period. Consequently, the ULJ decided five cases involving relator. The ULJ issued three identical orders addressing the fraud issue as a continuous period, dated November 12, 2010, November 22, 2010, and November 23, 2010. All three orders are the subject of this appeal.

<sup>2</sup> Also for reasons unclear from the record, DEED did not assess a fraud penalty for the latter two periods, despite finding that relator committed fraud.

relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). “An applicant who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud.” Minn. Stat. § 268.18, subd. 2(a) (2010). If an applicant obtained unemployment benefits by fraud, the applicant must promptly repay the benefits, and a penalty equal to 40% of the benefits fraudulently obtained must be assessed. *Id.* Whether an applicant committed a particular act is a fact question, and this court will not disturb a ULJ’s factual finding if the evidence substantially sustains it. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ.” *Id.* (citation omitted).

Relator disputed the fraud determination, claiming that she was confused by the questions presented by the automated reporting system, did not intend to defraud anyone, and assumed that the reporting system had taken her income from half-time employment into consideration because she had indicated in her initial application that her employment was being reduced from full time to half time. Other than relator’s testimony that she told DEED that her employment was being reduced from full time to half time, nothing in the record indicates what information relator gave to DEED in her initial application, what information DEED used to calculate her weekly benefit amount of \$537, or how the weekly benefit amount was calculated. Consequently, the record does not demonstrate that relator had a reason to know whether \$537 was the correct

weekly benefit amount for an applicant whose employment was reduced from full time to part time.

But relator received a handbook that instructed her to “[a]nswer ‘Yes’ if you worked at all, including if . . . you worked in a part-time job . . . [and/or] you worked in a job you had before you became unemployed.” And relator knew how to claim the income from her occasional employment as a substitute teacher, as evidenced by the fact that she claimed income on six occasions. Therefore, viewing the ULJ’s factual findings in the light most favorable to the decision, even if we assume that the ULJ accepted relator’s testimony that she believed that DEED already knew about her half-time employment, the ULJ could still conclude that relator did not have a good-faith belief that she correctly answered, “no,” when she was asked, “Did you work or have a paid holiday during the reporting period listed above? This includes Full Time, Part Time, Temporary Work, Self Employment or Volunteer Work.”

The plain language of the question is straightforward and unambiguous, and nothing in the question suggests that the applicant is being asked to report only employment that was not previously reported. Because relator knew that she worked half time during the reporting period, she knew that her answer was incorrect unless there was an exception for previously reported employment. But relator does not identify any evidence that provides a basis for believing that there was such an exception.

The ULJ’s conclusion that relator did not have a good-faith belief that her answer was correct rests on a credibility determination. *See Pechovnik v. Pechovnik*, 765, N.W.2d 94, 99 (Minn. App. 2009) (recognizing an implicit credibility determination).

“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. Because the record substantially supports the ULJ’s finding that relator did not have a good-faith belief that her answer was correct, we affirm.

**Affirmed.**