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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2169**

George H. Kalberer,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed August 12, 2013  
Affirmed  
Stoneburner, Judge**

Department of Employment and Economic Development  
File No. 30065863-2

George H. Kalberer, Northfield, Minnesota (pro se relator)

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

Considered and decided by Rodenberg, Presiding Judge; Stoneburner, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

In this certiorari appeal from the decision of an unemployment-law judge (ULJ) that he is ineligible for Tier 3 emergency unemployment compensation, relator argues that but for respondent's failure to "transfer" his benefits to Michigan, he would have been eligible for Tier 3 benefits in Michigan. Relator also makes numerous arguments

regarding his former employment that are unrelated to his eligibility for benefits.

Because the ULJ did not err in determining that relator is not entitled to the benefits he seeks, we affirm.

## **FACTS**

In April 2010, relator George H. Kalberer resigned from his employment as a journeyman mailer for the Star Tribune. Relator subsequently established a standard unemployment-insurance benefits account (STUI) with respondent Department of Employment and Economic Development (DEED), effective December 5, 2010. In August 2011, relator exhausted his STUI and began collecting Federal Emergency Unemployment Compensation (EUC). Relator collected Tier 1 EUC from August 2011 through February 2012. He then began collecting Tier 2 EUC, which were exhausted in June 2012.

In May 2012, relator moved to Michigan in an effort to collect Tier 3 EUC. On July 13, 2012, DEED issued to relator an amended determination of benefits account which provided relator with an additional week of Tier 2 benefits but no Tier 3 benefits. Relator challenged DEED's determination that he was not entitled to collect Tier 3 EUC. Following a de novo hearing, the ULJ, based on her determination that applicants who exhausted their Tier 2 EUC the week of April 8, 2012 or later are not eligible for Tier 3 EUC, held that because relator exhausted his Tier 2 EUC in June 2012, he is not eligible to receive Tier 3 EUC. Relator requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal followed.

## DECISION

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 the relator may have been prejudiced because, among other reasons, the decision is “affected by [an] error of law” or is “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2012). Interpretation of a statute presents a question of law, which is reviewed de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

Generally, an applicant who receives unemployment benefits under Minnesota law will collect the maximum state benefit in 26 weeks. Minn. Stat. § 268.07, subd. 2a(c)(2) (2012) (providing that eligible applicant is generally entitled to receive 26 times the weekly unemployment benefit amount for which the applicant qualifies); *Voge v. Dep’t of Emp’t & Econ. Dev.*, 794 N.W.2d 662, 664-65 (Minn. App. 2011) (stating that, absent interruption in benefit payment or change in amount of payments, applicant may collect the maximum yearly benefit in 26 weeks). An interruption or reduction in benefit payments may prolong the time it takes to reach the maximum yearly benefit for which an applicant is eligible. *Voge*, 794 N.W.2d at 665.

An applicant who collects the maximum benefit amount before the end of the unemployment-benefit year may be eligible to receive federal extended unemployment benefits. *Id.* Eligibility requirements for such extended benefits are set forth in Minn. Stat. § 268.115, subd. 3 (2012), which conforms to the federal requirements of the Federal–State Extended Unemployment Compensation Act of 1970, 26 U.S.C. § 3304

(2006) (EUC Act). *Id.* Since 1970, congress has created additional programs, including the tiered EUC program at issue in this case. *See* Supplemental Appropriations Act of 2008, Pub. L. No. 110-252, § 4002, 122 Stat. 2323, 2354–55, *amended by* Unemployment Compensation Extension Act of 2008, Pub. L. No. 110-449, §§ 2-3, 122 Stat. 5014, 5014–15 *and* Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, §§ 2-4, 123 Stat. 2984, 2984–86.

It is undisputed that relator collected his maximum state benefits; received Tier 1 EUC benefits from August 2011 through February 2012; and received Tier 2 EUC benefits until those benefits were exhausted in June 2012.

Under the Middle Class Tax Relief and Job Creation Act of 2012, an applicant is not eligible to receive Tier 3 benefits if the unemployment-insurance rate in the state in which the applicant resides falls below six percent prior to the week ending before June 1, 2012, and below seven percent after the last week ending before June 1, 2012. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 2122(b)(2). Minnesota’s unemployment insurance rate dropped below six percent in April 2012, which effectively “triggered off” Tier 3 EUC in Minnesota on April 7, 2012. *See* U.S. Dept. of Labor Emp’t and Training Admin., EUC 2008 TRIGGER NOTICE NO. 2012 - 12, THIRD AND FOURTH TIER EUC 2008 TRIGGERS UNDER P.L. 112-96 (2012), available at [http://www.ows.doleta.gov/unemploy/euc\\_trigger/2012/euc\\_040812.html](http://www.ows.doleta.gov/unemploy/euc_trigger/2012/euc_040812.html). Because relator exhausted his Tier 2 benefits in June 2012, after Tier 3 EUC were no longer available in Minnesota, the ULJ correctly concluded that relator was not eligible to receive Tier 3 benefits.

Relator argues that because he moved to Michigan in May 2012, and because the unemployment-insurance rate in Michigan was above six percent at that time, he would have been eligible to receive Tier 3 EUC in Michigan if DEED had “transferred” his unemployment benefits to Michigan. Relator argues that a transfer of his unemployment benefits is permitted under the “Interstate Benefit Payment Plan” (the plan), and that “by not transferring [his] benefits to Michigan on May 22, 2012, pursuant to [his] request,” DEED “violated [his] rights.”

Although relator raised his transfer argument at the de novo hearing, the ULJ did not address this argument, having concluded that relator was not eligible to receive Tier 3 EUC. Whether relator is entitled to a “transfer” of benefits under the plan is a question of law, subject to de novo review. *See Swenson*, 793 N.W.2d at 741 (statutory interpretation is a question of law that is reviewed de novo). Because as a matter of law there is no merit to relator’s argument that he is entitled to a “transfer” of benefits, there is no need to remand this matter to the ULJ.

The plan is a program which allows a worker who has lost his job in one state to collect unemployment compensation even though he currently resides in another state. *See* 26 U.S.C. § 3304(a)(9)(A) (2006). “The plan is based on the principle that benefit payments to a multi-state worker are to be subject to the same requirements that would apply if he were actually in the state from which he claims benefits.” *Bingham v. Am. Screw Prods. Co.*, 248 N.W.2d 537, 546 n.8 (Mich. 1976) (quotation omitted). The caselaw explaining the purpose of the plan is consistent with the documents submitted by relator that explain the purpose of the plan. Relator’s “Exhibit A,” to his reply brief,

which is a copy of the Interstate Benefit Payment Plan, provides that the purpose of the plan

shall be to initiate and further a method for the payment of unemployment compensation benefits to those unemployed individuals who have earned uncharged wage credits or who have accumulated uncharged credit weeks under the unemployment compensation laws of one or more States (the administrative agencies of which have subscribed to the Plan), and who otherwise might be deprived of benefits because of their absence from a State (or States) in which their benefit credits had been accumulated.

Relator's claim that he is entitled to additional EUC in Michigan is premised on a misconstruction of the plan. Under the plan, relator would be entitled to collect Minnesota unemployment benefits for which he is eligible even after he moved to Michigan. But relator is not entitled to any additional state or federal unemployment benefits under applicable Minnesota and federal law: there are no benefits to which relator is entitled in Minnesota, and therefore there are no benefits to be paid to him in Michigan.

In his appellate briefs, relator extensively discusses his ongoing lawsuit with his former employer. Because allegations related to that lawsuit are irrelevant to the issue of relator's eligibility for additional EUC, they are beyond the scope of this appeal, and we do not address them.

**Affirmed.**