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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0232**

Jose L. Estrada,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed November 25, 2013
Affirmed
Hooten, Judge**

Department of Employment and Economic Development
File No. 30419000-3

Jose L. Estrada, Woodbury, Minnesota (pro se relator)

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

Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator applied for and received unemployment benefits but was later found to have committed fraud by failing to disclose earnings while receiving benefits. Relator appealed a determination of ineligibility, which was later dismissed by an unemployment law judge (ULJ) after relator failed to participate in a rescheduled telephone hearing.

Relator argues that he did not receive proper notice of the rescheduled hearing and asserts that he thought he was supposed to reschedule the hearing. We affirm.

FACTS

Relator Jose L. Estrada established a benefit account effective July 1, 2012, and received payments between August 12 and October 30, 2012. An Unemployment Insurance Request for Weekly Wage Information submitted by The Long Term Care Group in Eden Prairie, dated October 30, 2012, established that relator worked between 16 and 54 hours per week between July 29 and October 27, 2012. On November 9, 2012, the Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility, finding that relator fraudulently failed to disclose earnings and imposing a penalty of \$639.20. A separate determination of ineligibility also dated November 9 calculated overpayments received by relator.

Relator appealed, and a notice of appeal dated November 30, 2012, scheduled a telephone hearing on the fraud issue for December 12, 2012, at 8:15 a.m. Through a Notice of Rescheduled Hearing dated December 3, 2012, the hearing was rescheduled for December 12, 2012, at 2:15 p.m. A ULJ called relator on the date and time of the rescheduled hearing. Relator did not answer and did not contact the ULJ after the ULJ explained in a voice message that the matter would be dismissed if relator did not call back. The ULJ called a second time minutes later and left a second voice message stating that the matter was being dismissed. The ULJ entered an order the next day dismissing relator's appeal due to his failure to participate in the hearing.

The record reflects that relator returned the Notice of Rescheduled Hearing to DEED with a note written on the notice, dated December 15, 2012, which stated: “I didn[']t see [t]his change plus this wasn[']t a good time for me[.]” An attached handwritten note, also dated December 15, reads as follows:

I wasn[']t aware of the change in the time[.] I wasn[']t available at that time [s]o I want a choice of time and [d]ate that I can be available. Not what best suits you and not me you changed it not me so I want the choice so I can be available[.] So I want to [a]ppeal the decision and have another hearing because I didn[']t know of the change in time[.] I thought I was supposed to reschedule.

Relator submitted a request for reconsideration on December 20, explaining as follows:

I was told to reschedule and [I] haven[']t yet but that is what [I] will do because [I] wasn[']t available nor did [I] know the new time[.] [I] didn[']t see it so [I] want to reschedule to a time [I] am available.

When asked to provide a reason for his failure to participate, relator explained:

[I] wasn't aware [I] thought [I] was supposed to reschedule for a time [I] could attend not a time that only best suited you it has to be a time we are both available not just what you want you were the ones that rescheduled it not me for a time [I] could not attend.

On January 22, 2013, the ULJ affirmed his prior order, explaining that the rescheduled hearing was a consolidation of the separate earnings and fraud determinations and concluding that, based on relator's representations that he thought he was supposed to reschedule the hearing, relator knew that the hearing for both issues was scheduled for December 12, 2012, at 2:15 p.m., and thus did not have good cause for failing to participate. This certiorari appeal follows.

DECISION

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the conclusion, decision, findings, or inferences are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2012).

“[I]f the appealing party fails to participate in the evidentiary hearing, the unemployment law judge has the discretion to dismiss the appeal by summary order.” Minn. Stat. § 268.105, subd. 1(d) (2012). “By failing to participate, the appealing party is considered to have failed to exhaust available administrative remedies unless the appealing party files a request for reconsideration under subdivision 2 and establishes good cause for failing to participate in the evidentiary hearing under subdivision 2, paragraph (d).” *Id.*

If the involved applicant . . . who filed the request for reconsideration failed to participate in the evidentiary hearing conducted under subdivision 1, an order setting aside the decision and directing that an additional evidentiary hearing be conducted must be issued if the party who failed to participate had good cause for failing to do so.

Id., subd. 2(d) (2012). “‘Good cause’ . . . is a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.* “A reviewing court accords deference to a ULJ’s decision not to hold an

additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). Mere unavailability to participate in an evidentiary hearing does not establish good cause for failing to participate. *See Petracek v. Univ. of Minn.*, 780 N.W.2d 927, 930 (Minn. App. 2010) (explaining that relator did not make showing of good cause for failing to participate in a hearing simply by explaining that he was in jail, absent explanation as to how the surrounding circumstances “would have prevented a reasonable person acting with due diligence from participating” (quotation omitted)).

Relator asserts that he was not provided with proper notice, the date was changed and he “did not know,” and again that he thought he “was supposed to reschedule and never knew they changed it.” He also asserts, without specific citation or explanation, that DEED’s “systems used are always wrong and malfunction [at] times.” He cites alleged previous instances where DEED has failed to pay him correct amounts, but does not provide any detail.

The record supports DEED’s argument that relator did not have good cause for failing to participate in the hearing because he did not diligently review the Notice of Rescheduled Hearing. Relator does not argue that he did not actually receive the notice, and the record establishes that relator received this notice¹ as confirmed by the fact that relator wrote a handwritten note on the actual notice vaguely explaining that he did not see it. Relator’s assertions that he thought he had to reschedule the hearing for a time

¹ He also does not argue that he was in any manner confused due to receiving multiple hearing notices.

convenient to him reasonably implies that he was in possession of the actual notice but mistakenly assumed that he could reschedule the hearing after the original hearing time passed.

Moreover, relator's complaint that the rescheduled hearing was not convenient for his schedule is belied by the fact that he never attempted to reschedule the hearing. The Notice of Rescheduled Hearing specifically provided that if relator wanted to reschedule the hearing, he was to "contact the Appeals Office immediately at telephone numbers listed below." Without explanation, relator failed to do so. As evidenced by relator's return of the Notice of Rescheduled Hearing, relator did not contact DEED until approximately four days after failing to participate in the hearing and receiving the ULJ's voice messages. Relator does not particularly explain how he did not receive proper notice. Finally, we note that relator's reference to prior DEED errors in his letter brief to this court is completely unsubstantiated.

Affirmed.