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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0090**

Brenda Kuschel,
Relator,

vs.

Consumer Directions, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed August 19, 2013
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development
File Nos. 303231939-3, 30207787-4

Brenda Kuschel, Holdingford, Minnesota (pro se relator)

Consumer Directions, Inc., St. Cloud, Minnesota (respondent)

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

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that she was overpaid unemployment-compensation benefits through fraud, based on her failure to report income from work performed caring for her son while she was receiving benefits. Because substantial evidence supports the ULJ's determination, we affirm.

FACTS

Relator Brenda Kuschel opened an unemployment-compensation benefits account with the Minnesota Department of Employment and Economic Development (DEED) in October 2011 after she separated from employment at Albany Junior High. She collected unemployment benefits of \$139 per week for the weeks of December 18, 2011, through April 18, 2012.¹ While she received benefits, Kuschel was also working as a personal-care attendant for her son and was paid \$12.61 per hour for that work. She worked 20 hours per week performing those services from August 21, 2006 through April 14, 2012; she also worked two hours per week from April 15, 2012, through April 28, 2012. She

¹ In order to be eligible for unemployment benefits, an applicant must serve a nonpayable period of one week that the applicant would be entitled to benefits. Minn. Stat. § 268.085, subd. 1(6) (2012). The “waiting week” must follow a period to which an applicant would otherwise be entitled to benefits. *See, e.g., Romanowicz v. Consol. Freightways Corp.*, 532 N.W.2d 614, 618 (Minn. App. 1995) (concluding that workers who could not work based on a strike in which they did not participate were disqualified from receiving benefits for one week after commencement of the strike, with that week to run consecutively and prior to the waiting week required of all benefits recipients). DEED originally credited Kuschel with a nonpayable waiting week for the week of December 11, 2011. But once the ULJ determined that she was not entitled to receive any benefits until the week of April 15, 2012, DEED changed the waiting week to the week of April 15, and the ULJ issued an amended determination to reflect this change.

received a check in her name for that work every two weeks by mail. A fiscal agent, Consumer Directions, Inc., processed the payment from her submitted timesheets and issued W-2 forms. But when Kuschel requested payment of unemployment benefits for those weeks, she reported that she had not worked during those weeks.

In October 2012, DEED issued a determination of ineligibility and a fraud determination, ordering Kuschel to repay the benefits paid when she was working for her son and failed to report her wages, as well as a 40% penalty for fraud. Kuschel appealed that determination. At a hearing before a ULJ, a representative from Consumer Directions testified that Kuschel signed a rule-and-responsibility statement that emphasized that she would be receiving income as from any other job. Kuschel testified that, although she received the checks for that work, she did not believe it was considered income to her because she used it for her son's needs, including his housing and clothing. She stated that, in contrast, she always reported to DEED her pension income from a previous job at Albany Junior High. She acknowledged that she was paid based on hours worked for her son and that, when asked to report her earnings requesting benefits payments, she "made a mistake" by not reporting these hours as employment. She testified that she did not lie about reporting her earnings and that DEED should have known that she had this income because it was reported on W-2 forms. She testified that when DEED suspended her benefits for an inadequate job search earlier in the year, DEED should have then noticed any gap in her income reporting.

The ULJ issued a determination that the preponderance of the evidence supported that Kuschel was overpaid benefits due to fraud. The ULJ found that Kuschel's

testimony was not credible, finding that she was responsible for reporting whether she worked and had earnings and that she had no good-faith basis for failing to report that she was working. Kuschel requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

This court will affirm a ULJ's decision unless it derives from unlawful procedure, relies on an error of law, or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2012). This court reviews the "ULJ's factual findings in the light most favorable to the decision," *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted), and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Minnesota law provides that "[a]ny 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) (2012). The statute imposes a mandatory penalty in the amount of 40% of the benefits fraudulently obtained. *Id.* "Whether a claimant knowingly . . . misrepresented or misstated material facts to obtain benefits involves the credibility of the claimant's testimony." *Burnevik v. Dep't of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Kuschel does not dispute that she received payments from Consumer Directions related to work for her son. But she argues that she had a good-faith belief that she did not need to disclose those payments because they were for her son's needs and did not constitute income to her. But whether she believed in good faith that the information she was reporting was accurate presents a credibility matter for the ULJ. The ULJ found her testimony not to be credible and the testimony of the Consumer Directions employee to be credible. We defer to the ULJ's credibility determinations. *Id.* Kuschel acknowledged that she received W-2 forms for her work for her son. But in reporting to DEED on a weekly basis, she was asked the following question: "Did you work or have a paid holiday during the reporting period?" Each week, she replied, "no." Additionally, she did not report her income from that work when asked each week if she had received "income from any other source, that [she had] not previously reported." The record therefore supports the ULJ's finding that Kuschel knowingly misrepresented, misstated, or failed to disclose the material fact that she was receiving income as a result of the work for her son. *See, e.g., Burnevik*, 367 N.W.2d at 683 (holding that relator, who indicated on tax forms that he was employed but on unemployment forms that he was not employed, committed fraud).

Kuschel maintains that the reason she did not report her work was that she did not believe it was counted as income for the purposes of reducing her unemployment benefits. But the statute does not require only a knowing intent to defraud; it also provides that a false representation made without a good-faith belief as to its correctness constitutes fraud. *See* Minn. Stat. § 268.18, subd. 2(a). And even if Kuschel believed

that this work would not affect her claim, her receipt of a W-2 form for that work is inconsistent with a good-faith belief in her false report that she was receiving no other income besides her Albany Junior High pension while receiving benefits.

Kuschel also argues that she may have made a mistake in not reporting her income received as a personal care attendant, but because her earnings were reported for tax purposes, DEED should have had noticed that she was receiving that income. But she has provided no authority for her argument that she was not required to provide DEED with this information in order to receive benefits or that DEED should have received it from another source.

Finally, Kuschel argues for the first time on appeal that, because her son left her home on April 16, 2012, she was no longer employed by him as a personal-care attendant after that time, and DEED improperly sought to recover benefits paid through October 2012. But we need not address arguments that were not considered by the ULJ, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and in any event, DEED did not seek to recover benefits for weeks Kuschel worked after April 2012. Similarly, we decline to consider for the first time on appeal Kuschel's newly proffered evidence of a time sheet covering the weeks of April 15 and April 30, 2012. *See* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal consists of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings"). We note that at the hearing, Kuschel did not dispute the work hours and dates submitted by Consumer Directions for those weeks. *See Thiele*, 425 N.W.2d at 582. Substantial evidence supports the ULJ's determination

that Kuschel was ineligible for benefits due to fraud and that she was required to pay a penalty based on that determination.

Affirmed.