

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1637**

Vicky A. Dorner,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed July 29, 2008  
Affirmed  
Collins, Judge\***

Department of Employment and Economic Development  
File No. 7976 07

Vicky A. Dorner, 1938 South Baker Road, Balsam Lake, WI 54810 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic  
Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN  
55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and  
Collins, Judge.

---

\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

On certiorari appeal, relator challenges the decision of the unemployment-law judge (ULJ) that she is ineligible to receive unemployment benefits after April 28, 2007, arguing that she should be allowed benefits for 52 weeks after she began receiving payments in December 2006. Because the ULJ's findings of fact are supported by substantial evidence and because relator is not entitled to unemployment benefits under any statute, we affirm.

### FACTS

Relator Vicky A. Dorner was laid off in April 2006 after 32 years of employment with Unisys Corporation, and she received severance payments through December 2006. After being laid off, Dorner established an unemployment-benefit account with an effective date of April 30, 2006, and requested unemployment benefits. In June 2006 respondent Department of Employment and Economic Development (DEED) informed Dorner that she was ineligible to receive benefits while receiving severance payments and that she could request benefits after severance payments ceased. In December 2006 Dorner renewed her request for unemployment benefits and received benefit payments from December 2006 to April 28, 2007. In May 2007, DEED informed Dorner that she was ineligible for further benefits because the year of her April 30, 2006 benefit account expired on April 28, 2007. Dorner then applied for a second benefit account, but DEED determined that Dorner was ineligible to establish a second account because she had not worked in "covered employment" after April 30, 2006.

Dorner sought review of the DEED determination. The ULJ found that Dorner established a benefit account with an effective date of April 30, 2006; she did not withdraw that account; she requested and received approximately 20 weeks of benefits; her benefit year ended April 28, 2007; and she had not worked in covered employment since April 30, 2006. On that basis, the ULJ determined that Dorner was ineligible for further benefits. The ULJ affirmed his decision following Dorner's request for reconsideration. This appeal followed.

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

On appeal from a determination of ineligibility, the ULJ's determination must be affirmed unless the decision derives from unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006). Whether an employee is disqualified from receiving unemployment benefits is a question of law reviewed de novo. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). But when the legal conclusion is based upon factual determinations, we view the ULJ's factual findings in the light most favorable to the decision and will not disturb those findings unless they are unsupported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); Minn. Stat. § 268.105, subd. 7(d)(5).

Upon an application for unemployment benefits, DEED makes a "determination of benefit account," which establishes the applicant's unemployment-benefit account and the amount of benefits available to the applicant. Minn. Stat. § 268.07, subd. 1(b) (2006). A benefit account is "effective the Sunday of the calendar week that the application for

unemployment benefits was filed.” *Id.*, subd. 3b(a) (2006). In order to receive unemployment benefits from an established benefit account, the applicant must, among other things, “activate” the account by filing “continued requests for unemployment benefits.” Minn. Stat. §§ 268.069, .086 (2006 & Supp. 2007).

Dorner first argues that her April 30, 2006, unemployment-benefit account was “activated prematurely” by DEED in April 2006 and not “deactivated” by DEED in June 2006 following the notice that she was ineligible to receive benefits while receiving severance payments. Dorner implies that she is entitled to unemployment benefits for 52 weeks after she started receiving benefits in December 2006. We disagree for two reasons.

First, the record shows that Dorner’s unemployment-benefit account was inactive while she was receiving severance payments because she did not file continued requests for unemployment benefits during that time. *See* Minn. Stat. § 268.086, subd. 1(a).

Second, an applicant’s receipt of unemployment benefits from a benefit account is limited to one “benefit year,” which is defined as the “52 calendar weeks beginning the date a benefit account is *effective*.” Minn. Stat. §§ 268.07, subd. 3b(d) (Supp. 2007), .035, subd. 6 (2006) (emphasis added). Dorner established an unemployment-benefit account with an effective date of April 30, 2006. This was communicated to Dorner on a document sent by DEED showing: “**Effective Date of Account: 04/30/06.**” Dorner did not withdraw the April 30, 2006 benefit account.<sup>1</sup> Dorner’s eligibility for unemployment

---

<sup>1</sup> The statute provides that an applicant may withdraw an established benefit account only if (1) a new benefit application is filed and a new benefit account is established at the

benefits was therefore limited to the 52 calendar weeks between April 30, 2006, and April 28, 2007, regardless of when the account was activated or how many weeks of benefit payments she actually received.

Dorner next argues that she did not receive complete information from DEED and, as a result, she did not take actions that, she argues, could have enabled her to receive the full amount of unemployment benefits in her benefit account.<sup>2</sup> The legislature has unequivocally decreed that “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2006 & Supp. 2007). Thus, even if Dorner is correct in arguing that DEED provided insufficient or incorrect information to her, she is not entitled to unemployment benefits in the absence of a statutory provision allowing such benefits. As concluded above, Dorner is precluded by statute from receiving benefits after April 28, 2007, from her April 30, 2006 benefit account. And Dorner does not dispute that she is ineligible to establish a second benefit

---

time of the withdrawal, and (2) the applicant has not previously served a “waiting week” pursuant to section 268.085, subdivision 1, clause 5. Minn. Stat. § 268.07, subd. 3b(c) (2006 & Supp. 2007). It is undisputed that Dorner did not withdraw the April 30, 2006 account and that she has already served a waiting week. She is therefore unable to now withdraw the April 30, 2006 account and establish a new one.

<sup>2</sup> Benefits are calculated based on the applicant’s wages during the first four of the last five completed calendar quarters immediately preceding the application. Minn. Stat. §§ 268.07, subd. 2(a), .035, subds. 4, 27 (2006). Thus, the amount of benefits available to an applicant depends on a number of factors, including when the applicant became unemployed, when severance payments ceased, and when the applicant established the account. Because severance payments are not wages, had Dorner withdrawn and reestablished her account in December, as she implies she would have done had she been sufficiently informed by DEED, she would not necessarily have been entitled to more benefits than she actually received from the April 30, 2006 account.

account because she did not “perform[] services in covered employment after the effective date of the prior benefit account.” Minn. Stat. § 268.07, subd. 3 (2006).

Because the ULJ’s factual findings are supported by substantial evidence and because Dorner is not entitled to further benefits under any statute, we affirm the ULJ’s decision.

**Affirmed.**