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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1963**

Anwar Parvez,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed September 8, 2009
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 21057972-4

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55337-4512 (for relator)

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Considered and decided by Toussaint, Chief Judge; Stoneburner, 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UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Anwar Parvez challenges the decision of the unemployment-law judge (ULJ) that relator committed fraud within the meaning of Minn. Stat. § 268.18, subd. 2 (2008). Because the ULJ's decision is supported by substantial evidence and is not arbitrary or capricious, we affirm.

DECISION

In September 2007, relator separated from employment. He applied for unemployment benefits with respondent Department of Employment and Economic Development every week from October 2007 to December 2007. The application asked if the applicant worked during the reporting period, and relator repeatedly answered "no." But relator had obtained full-time employment with another employer in October 2007 and was earning \$3,173 every two weeks thereafter.

Not knowing of relator's employment, respondent paid him \$4,872 in unemployment benefits from October 7, 2007 to December 29, 2007. In July 2008, respondent determined that relator improperly received unemployment benefits because he was employed during the period for which benefits were paid and required him to return the benefits and to pay a fraud penalty of \$1,936. Relator repaid the benefits but challenged the fraud penalty.

Following a de novo evidentiary hearing, the ULJ affirmed respondent's decision, finding that relator committed fraud by falsely reporting that he was not working when,

in fact, he was working at least 40 hours per week and requesting unemployment benefits for weeks during which he was employed.¹ Upon relator's request for reconsideration, the ULJ affirmed the findings and decision.

I.

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

....

- (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) (2006); *see Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (applying this standard).

Relator argues first that the fraud penalty was arbitrary and capricious because the common-law elements of fraud were not met. But “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2006). Because respondent is not required to satisfy the common-law fraud elements to deny unemployment benefits or to impose a fraud penalty, relator's argument is without merit.

¹ The ULJ's opinion states both that “[relator] was overpaid benefits in the total amount of \$4,842.00” and that “[t]his determination results in an overpayment of unemployment benefits in the amount of \$0.00.” We attribute the second statement to clerical error.

An applicant for unemployment benefits is not eligible to receive benefits for any week in which the applicant performs at least 32 hours of employment. Minn. Stat. § 268.085, subd. 2(6) (2006). The record shows that relator worked at least 40 hours during each of the weeks for which he claimed benefits and that he denied working during those weeks. The ULJ's determination that relator knowingly misstated and failed to disclose material facts regarding his employment and gross earnings, leading to the overpayment of benefits, was not arbitrary nor capricious

Moreover, substantial evidence supports the ULJ's determination that relator committed fraud and incurred the statutory-fraud penalty. An applicant who receives benefits by knowingly misrepresenting, misstating, or failing to disclose a material fact commits fraud. Minn. Stat. § 268.18, subd. 2(a). Upon a showing of fraud, wrongfully obtained benefits are to be repaid and a penalty of 40% of the fraudulently obtained amount is assessed. *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) (addressing similar fraud provision under previous version of statute). We defer to the ULJ's credibility determinations and will not disturb the ULJ's factual findings when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ implicitly discredited relator's testimony that he did not report his earnings because he was concerned that respondent's ongoing investigation of his

previous employment would cease and concluded that relator had “no reasonable basis . . . to believe that he did not have to report his gross earnings” for the weeks in question. Relator’s testimony that he failed to report earnings because he was instructed over the telephone by a department representative not to report his earnings was discredited when the ULJ found that the “unemployment benefits handbook clearly and unequivocally states that an applicant is required to report whether he has worked for an employer . . . in any week for which unemployment benefits are being requested and gross earnings for those weeks.” The ULJ’s findings demonstrate that the ULJ did not find relator’s testimony to be credible, and this court defers to that determination. *See id.*

Because undisputed evidence confirms that, while employed, relator repeatedly indicated to respondent that he was not working, was not receiving any income, and was looking for work, and because the ULJ made the requisite credibility assessments, the ULJ’s decision that relator committed fraud is supported by substantial evidence and is not arbitrary or capricious.

II.

Relator argues that the ULJ failed in her duties to assist an unrepresented party and to conduct the hearing as an evidence-gathering inquiry. Because relator fails to present an argument as to how or why the ULJ failed in these duties, we disagree.

An assignment of error in a party’s brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).

Here, the ULJ fully explained the legal issues, explained the evidence as it was presented, and gave relator several opportunities to submit documentation in support of his claim. Thus, prejudicial error is not obvious on mere inspection. Relator waived her claims that the ULJ failed in her duties to assist a pro se party and to conduct the hearing as an evidence-gathering inquiry.

Affirmed.