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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2114**

Cheryl Byrne,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed September 15, 2009
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 21118284

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Considered and decided by Kalitowski, Presiding 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UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges the denial of extended unemployment benefits, arguing that the unemployment law judge (ULJ) erred by (1) finding that she had insufficient wage credits to qualify and (2) failing to assist relator in fully developing the hearing record. Because the ULJ correctly determined that relator had insufficient wage credits to qualify for extended unemployment benefits and the record does not support relator's assertion that the ULJ failed to assist her at the hearing, we affirm.

FACTS

In November 2007, relator Cheryl Byrne established an unemployment benefits account with the Department of Employment and Economic Development (DEED) and qualified for \$241 per week in unemployment compensation. After exhausting her state unemployment benefits, Byrne filed for a federally funded extension under the Emergency Unemployment Compensation program. DEED determined that Byrne had not earned the statutorily required 40 times her weekly unemployment benefit amount in covered employment to qualify for federal benefits. Byrne appealed DEED's determination and the ULJ affirmed. Byrne's request for reconsideration was denied, and this certiorari appeal followed.

DECISION

When reviewing the decision of the ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision 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) (2008). Findings of fact are viewed in the light most favorable to the ULJ’s decision and are upheld if supported by substantial evidence. *Id.*, subd. 7(d)(5); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review questions of law de novo. *Carlson v. Dep’t of Employment & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

To qualify for extended unemployment benefits, an applicant must (1) be an “exhaustee,” (2) satisfy the requirements for regular unemployment benefits under section 268.069, (3) have wage credits of at least 40 times the weekly unemployment benefit amount, and (4) not be subject to a denial of extended unemployment benefits under subdivision 9. Minn. Stat. § 268.115, subd. 3 (Supp. 2007). An “exhaustee” is an applicant who, although the benefit year has not expired, has received the maximum amount of regular unemployment benefits available under section 268.07 and has no claim to any other unemployment benefit under other state or federal laws. *Id.*, subd. 1(7) (Supp. 2007).

In denying Byrne’s motion for reconsideration, the ULJ stated that

even if we were to accept Byrne’s argument (which we do not) that the \$421.08 should be added onto the wage credits . . . so that her . . . total wage credits would be \$9,703.61, it would have the effect of raising Byrne’s weekly benefit amount to \$257[,] . . . [and] Byrne would then need to have

earned . . . \$10,280, to qualify for extended unemployment benefits.^[1]

At oral argument, DEED conceded that the formula applied by the ULJ to determine Byrne's benefit amount was incorrect, but contended that the proper outcome is unaffected by the error. In a supplemental filing, DEED clarified that if the \$421.08 which Byrne asserts is properly included in income were added, Byrne's wage credit would be \$6,703.61, not \$9,703.61, but regardless, DEED correctly determined that her weekly benefit amount would be \$257. Thus, Byrne would nevertheless need to have earned \$10,280 to qualify for extended unemployment benefits. Because it is undisputed that even if we consider the additional wage as income, Byrne earned only \$9,703.61 during the relevant period; thus, the ULJ did not err by finding that Byrne did not qualify for extended unemployment benefits.

II.

Relator also argues that the ULJ failed to assist her in fully developing the hearing record. The ULJ is to conduct the evidentiary hearing as an "evidence gathering inquiry" rather than "an adversarial proceeding" and "must ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). The ULJ "must

¹ In concluding that under no circumstance would Byrne qualify for extended unemployment benefits, the ULJ excluded evidence of an additional wage Byrne asserted should be included as income, and found that even if the additional wage should be considered, Byrne failed to establish that the wage was income for the purpose of unemployment compensation. On appeal, DEED maintains that the ULJ correctly excluded the evidence of the additional wage. However, because we conclude that the ULJ correctly found that under no circumstance would Byrne qualify for extended unemployment benefits, we decline to address whether Byrne timely appealed DEED's income determination or whether the additional wage is properly considered income.

exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007); *Miller v. Int'l Express Corp.*, 495 N.W.2d 616, 618 (Minn. App. 1993) (stating that official who conducts hearing has obligation to recognize and interpret parties' claims, particularly when parties are pro se). "ULJs have a duty to reasonably assist pro se parties with the presentation of the evidence and the proper development of the record." *Thompson v. County of Hennepin*, 660 N.W.2d 157, 161 (Minn. App. 2003) (citing Minn. R. 3310.2921). To prevail on a claim of an unfair hearing, the relator must show that her substantial rights were prejudiced because the decision was made through unlawful procedure or affected by error of law. *See Ywswf v. Teleplan Wireless Servs.*, 726 N.W.2d 525, 530 (Minn. App. 2007).

During the hearing, Byrne complained that she was not getting a fair hearing because the ULJ was "being extremely rude" and "want[ed] to pin [her] down on something and then when [she gave the ULJ] the answer, [the ULJ did not] like it." And Byrne now asserts that the ULJ "failed in her duties to assist an unrepresented party and to conduct the hearing as an evidence-gathering inquiry[.]" However, Byrne points us to nothing in the record supporting her assertion.

At the hearing, the ULJ explained the hearing procedure in detail, read an opening statement, extensively questioned Byrne, and kept the record open for seven days following the hearing to allow Byrne to provide evidence of additional earned income. And although Byrne asserts that the ULJ was trying to "pin her down", the following record excerpt demonstrates that the ULJ simply sought to clarify what Byrne intended to submit to supplement the record:

Q: So you are sending me a pay period record from Copeland Truc-king?

....

A: I don't like these words being put in my mouth. I'm sending you something that disputes what you have for the wages they paid me.

....

Q: I'm trying to understand what you're sending me so that I can make a record of it so that I hold the record open for you.

A: I understand that. I'm trying to answer your question. I'm sorry it's not to your satisfaction. I'm sending you a document that disputes what you have on file for the wages earned. So I guess if you need a name for the document, you can call it Copeland Payroll Stub. [Or] Copeland Payroll Earnings.

Q: I'm just trying to make a note of what you're sending, ma'am. That's all.

A: I thought I was very specific with that.

Because neither Byrne's bald assertion that the ULJ "failed in her duties to assist an unrepresented party and to conduct the hearing as an evidence-gathering inquiry" nor the hearing record supports Byrne's contention that she was not given a fair hearing, Byrne fails in her burden to establish that her substantial rights were prejudiced because the decision was made through unlawful procedure or affected by error of law. Therefore, we cannot conclude that the ULJ failed to properly assist the pro se relator in ensuring that all of the relevant facts were clearly and fully developed at the hearing.

Affirmed.