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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1090**

Andrea Cheney,  
Relator,

vs.

Rapid Recovery Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed March 2, 2010  
Affirmed  
Kalitowski, Judge**

Department of Employment and Economic Development  
File No. 22161886-3

Andrea Cheney, White Bear Lake, Minnesota (pro se relator)

Rapid Recovery, St. Paul, Minnesota (respondent)

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

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

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

Relator Andrea Cheney challenges the unemployment-law judge's dismissal of her appeal of her denial of unemployment benefits and denial of her request for reconsideration. Because relator failed to participate in the evidentiary hearing and did not show good cause for the failure to participate in her request for reconsideration, we affirm.

### DECISION

We review an unemployment-law judge's (ULJ) decision to determine whether the relator's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). The determination that an employee is disqualified or ineligible for unemployment benefits is a question of law on which appellate courts exercise independent judgment. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). But in the resolution of conflicting testimony or the assessment of credibility, we defer to the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

A ULJ may dismiss an appeal "if the appealing party fails to participate in the evidentiary hearing." Minn. Stat. § 268.105, subd. 1(d) (2008). A party who fails to participate is considered to have failed to exhaust available administrative remedies. *Id.* A relator can file a request for reconsideration to establish good cause for failing to participate in a hearing. *Id.* "Good cause" is defined as a "reason that would have

prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.* at subd. 2(d) (2008).

The record supports the ULJ’s conclusion that relator did not participate in her hearing. The hearing was scheduled for 8:15 a.m. The record indicates that relator was aware of the time and date of the hearing, and had received a notice instructing her to call the department if she did not get a call within ten minutes of the scheduled time. The record further indicates that (1) the ULJ called relator at 8:13 a.m. and at 8:34 a.m., and left messages, but relator did not answer her phone; (2) the ULJ dismissed relator’s appeal for her failure to participate; and (3) in her request for reconsideration, relator failed to establish good cause for not participating in the hearing.

In her appellate brief, relator argues the merits of her case but does not address why she failed to participate in the hearing. Because relator has presented no evidence that would support a finding of good cause for her failure to participate, the ULJ did not abuse her discretion in dismissing the appeal and denying relator’s request for reconsideration.

**Affirmed.**