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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A10-99

A10-156

A10-157

Amit Rathod, n/k/a Amir Khimji,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

Filed October 19, 2010

Affirmed

Kalitowski, Judge

Department of Employment and Economic Development
File Nos. 22920804-3, 22792925-3, 22870279-3

Amir Khimji, Maple Grove, Minnesota (pro se relator)

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

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Amir Khimji, also known as Amit Rathod, appeals from the
unemployment-law judge's (ULJ) decision finding him ineligible for unemployment
benefits, requiring him to repay fraudulently obtained benefits and assessing a fraud

penalty. Because the record supports the ULJ's findings and credibility determinations, we affirm.

D E C I S I O N

This court may affirm the decision of the ULJ, remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2008).

We review a ULJ's findings of fact in the light most favorable to the decision and defer to a ULJ's credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). Whether an applicant committed a particular act is a question of fact, which we will also not disturb if the evidence sustains it. *Id.* at 344. But we review issues of law and questions of statutory interpretation de novo. *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 814-15 (Minn. App. 2008).

An applicant for unemployment benefits who receives 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) (Supp. 2009). When an applicant establishes an unemployment-benefit account, he or

she is assigned a personal identification number (PIN) to use to request benefits. Minn. Stat. § 268.084(a) (Supp. 2009). Minn. Stat. § 268.084(b) (Supp. 2009) establishes a presumption that when a PIN is used, the applicant to whom the PIN was issued both used the PIN and received the benefits. This presumption may be rebutted if a preponderance of the evidence shows that the applicant was not the person who used the PIN. Minn. Stat. § 268.084(b). If an applicant obtained unemployment benefits by fraud, the applicant must promptly repay the benefits, and the commissioner “must assess a penalty equal to 40 percent of the amount fraudulently obtained.” Minn. Stat. § 268.18, subd. 2(a) (Supp. 2009).

Here, relator, under the name Amit Rathod, established a benefit account with the Minnesota Department of Employment and Economic Development (DEED) on October 12, 2008, after being laid off. Although relator found new full-time employment in December 2008, his bank account continued to receive benefits through June 6, 2009. The record indicates that from December 2008 to June 2009, relator’s PIN and social security number were used to request benefits from DEED and that DEED direct-deposited benefits into relator’s bank account each week. After relator’s employer reported his wages, DEED issued a determination of ineligibility and assessed a fraud penalty on all benefits relator received between December 14, 2008 and June 6, 2009. Relator appealed these determinations, claiming that someone must have accessed his benefit account and requested and received the benefits in his name.

The ULJ found that relator’s claims that someone accessed relator’s account and used his PIN and social security number to request benefits were not plausible, and were

insufficient to overcome the presumption in Minn. Stat. § 268.084(b) that relator was the person using his PIN. Thus, the ULJ made a credibility determination that we will not disturb on appeal. *See Skarhus*, 721 N.W.2d at 345. The ULJ found that relator established a benefit account under his prior name, continued to request and receive benefits after working full time, and did not vigorously pursue any allegation of identity theft with the police or the bank. Because substantial evidence in the record supports these findings, we defer to them. *See id.* at 344.

Relator does not dispute that he performed work during various periods of unemployment eligibility, rendering him ineligible for benefits. *See* Minn. Stat. § 268.085, subd. 2(6) (Supp. 2009) (finding applicants who have worked more than 32 hours in a week ineligible for benefits). And the ULJ determined that relator failed to rebut the presumption that relator was the person who used his PIN to request benefits despite working full time, and thereby committed fraud. *See* Minn. Stat. § 268.18, subd. 2(a) (stating that an applicant “who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud”). Because the evidence supports the ULJ’s findings and determinations, we affirm the ULJ’s finding of ineligibility and assessment of fraud penalty.

Affirmed.