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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-105**

Roselene Devi,
Relator,

vs.

Summit Hotel Properties, LLC,
Respondent,
Brighter Building Maintenance, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed October 26, 2010
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File Nos. 23585241, 22656108-3

Rosalene Devi, St. Paul, Minnesota (pro se relator)

Summit Hotel Properties, L.L.C., Sioux Falls, South Dakota (respondent)

Brighter Building Maintenance, Inc., St. Louis Park, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for department)

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator Roselene Devi challenges the determinations of the unemployment-law judge (ULJ) that Devi fraudulently failed to report earnings and is subject to a fraud penalty equal to 40 percent of the overpaid benefits. Because the record supports the ULJ's determination that Devi committed fraud as defined by the Minnesota Unemployment Insurance Law, we affirm.

DECISION

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights were prejudiced because the findings, inferences, conclusions, or decision were erroneous as a matter of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2008).

Minn. Stat. § 268.18, subd. 2(a) (Supp. 2009) provides that a benefits applicant commits fraud when the applicant receives benefits by “knowingly misrepresenting, misstating, or failing to disclose any material fact, or [] mak[ing] a false statement or representation without a good faith belief as to the correctness of the statement or representation.” If it is determined that 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.” *Id.*

Determining whether an applicant committed fraud in connection with a request for benefits involves assessing the credibility of the applicant's testimony. *Burnevik v.*

Dep't of Econ. Sec., 367 N.W.2d 681, 683 (Minn. App. 1985). “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). “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (Supp. 2009).

In this appeal, Devi, who describes herself as not being able to speak English, does not identify the basis of the appeal, but objects to the “outrage[ous] decision made by the judge, [without] knowledge of the situation.” In apparent deference to the language barriers presented by this case, the Minnesota Department of Employment and Economic Development does not criticize Devi’s briefing failure and describes Devi’s objections to the decision as those raised in her motion for reconsideration, with which she had the assistance of legal services.

Devi does not dispute that she was overpaid unemployment benefits from March through May of 2009. She concedes that during this time she was working part-time and simultaneously filing weekly requests for unemployment benefits, answering “no” when asked if she had worked at all during the period for which benefits were requested. The issue is whether Devi’s answers constitute fraud under Minn. Stat. § 268.18, subd. 2(a).

DEED submitted exhibits 7-1 through 7-10, which appear to be Devi’s recorded answers to the questions that she was asked during the phone calls in which she sought benefits from March 1, 2009 through May 9, 2009. For each week, Devi answered “no” to the question “Did you work or have a paid holiday during the reporting period listed

above? This includes Full Time, Part Time, Temporary Work, Self Employment or Volunteer Work.” She also answered “no” to the questions asking whether, during the relevant period, she had (1) received income from any other source; (2) refused work; (3) quit a not-previously-reported job; or (4) been discharged from a not-previously-reported job. Devi answered “yes” to the questions asking “Were you available for work?” and “Did you look for work?” Exhibits 7-11 and 7-12 submitted by DEED show that Devi, in fact, was working and had received income during eight of the ten weeks in this period.

Testifying through an interpreter at the hearing conducted by the ULJ, Devi asserted that she could not understand the questions on DEED’s automated phone system and therefore never used the automated system, but always talked to someone. Devi also testified that she told a DEED telephone operator that she did not understand how to use the automated system and that she would send her pay stubs to DEED (or pay stub, the record is not clear) so that DEED could accurately determine her benefit. She testified inconsistently about when she sent pay stubs or a pay stub to DEED. First, she stated that she sent the pay stubs about a week after benefits stopped. Later, she said she could not remember when she mailed pay stub(s), but it could have been in May.

DEED’s Exhibit 4-3 is the only pay stub in the record. It is for the period of June 21–July 04, 2009. We conclude that substantial evidence in the record supports the ULJ’s findings that Devi made false representations about her employment situation, and that she did not provide any pay stubs to DEED until “some point in the late spring or summer,” which was after she had made the misrepresentations. The ULJ found that

even if Devi did not understand the questions, Devi could not have had a good faith basis for her misrepresentations, reasoning that a person who answers a question that she does not understand cannot have a good faith belief as to the correctness of the answer.

Additionally, the ULJ found that to the extent Devi claimed to have submitted pay stubs at the time she was requesting benefits, her testimony “is simply not credible,” citing Devi’s own contrary testimony and DEED’s exhibit

On reconsideration, the ULJ specifically found that Devi did not understand the questions that asked if she had worked or received other earnings during the period for which she was requesting benefits, again concluding that Devi could not have answered the questions in good faith when she did not understand them. On this record, we conclude that substantial evidence supports the ULJ’s findings that Devi misrepresented whether she was working and receiving income, and that those statements were not made in good faith. We defer to the ULJ’s determination to discredit a portion of Devi’s testimony, a determination that was sufficiently explained by the ULJ. The ULJ’s findings support the conclusion that Devi committed fraud as it is defined in Minn. Stat. § 628.18, subd. 2(a).

Affirmed.