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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-116**

David Langevin,
Relator,

vs.

RELS, LLC,
Respondent,

Independent School District #197,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 24, 2010
Affirmed
Shumaker, Judge**

Department of Employment and Economic Development
File No. 22417848-6

David R. Langevin, Mendota Heights, Minnesota (pro se relator)

RELS LLC, c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent employer)

Independent School District #197, St. Paul, Minnesota (respondent employer)

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

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Relator brings a certiorari appeal of the unemployment-law judge's (ULJ) decision that he is ineligible for benefits because he committed fraud by failing to report earnings from two different employers. Because the ULJ's credibility determinations are supported by the record, we affirm.

FACTS

After relator David Langevin was laid off from his full-time job with a loan company, he established an unemployment-benefits account with the Minnesota Department of Employment and Economic Development (DEED). Effective November 9, 2008, he became eligible for a weekly benefit amount of \$566. Langevin requested benefits online and received information through that source and through a DEED handbook about eligibility and reporting requirements. He admitted that he read the handbook.

To obtain unemployment benefits, Langevin was required to complete an online form regarding his work status. At all relevant times, he answered "no" to the question "Did you work?" during the period for which he sought benefits.

Despite his answers, Langevin worked as a high school hockey coach during the 2008-09 season. He started in November 2008, worked approximately 10 hours most weeks, and earned \$373.10 for each of such weeks worked. He did not report these earnings because, in a conversation he had with a DEED representative at the outset of his unemployment period, he stated that he would work as a hockey coach as he had done

in the previous years. Thus, he contends, he believed DEED already knew about that job and he assumed the form was intended to address other employment.

In February 2008, respondent RELS hired Langevin to work as a real estate appraiser. For his work, he received a bi-weekly draw of \$910, plus commission on any amount that exceeded his draw. Langevin requested benefits through the week of March 8, 2009, but did not disclose his employment with RELS. He contends that his reason for not disclosing this employment was that his income took the form of draws that he had to pay back if he did not earn sufficient commissions. He did not receive his first commission check until April 2009, after he stopped requesting unemployment benefits.

The ULJ found that Langevin was required to report his earnings from his coaching and appraisal jobs and that, as a result of his failure to do so, he received overpayments in benefits of \$4,045.84. The ULJ also finds that Langevin committed fraud respecting his nondisclosures. Langevin challenges these findings on appeal.

D E C I S I O N

This court may affirm, or it may reverse, remand, or modify the decision of the ULJ if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusions, or decisions are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). An “applicant who receives unemployment 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).

Determining whether the applicant knowingly failed to disclose material facts while requesting benefits requires assessing the credibility of the applicant’s testimony. *Cash v. Comm’r of Econ. Sec.*, 352 N.W.2d 535, 537 (Minn. App. 1984). “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). If it is determined that the applicant obtained unemployment benefits by fraud, the applicant must promptly repay the unemployment benefits, and the commissioner “must assess a penalty equal to 40 percent of the amount fraudulently obtained.” Minn. Stat. § 268.18, subd. 2(a).

The ULJ found that Langevin did not have a good-faith belief that his answers regarding employment were correct, despite Langevin’s contentions that DEED already knew about the coaching job and that he actually received no earned income from RELS. Thus, the central issue was one of Langevin’s credibility.

In resolving the credibility issue against Langevin, the ULJ noted that Langevin admitted reading the benefits handbook, which “explicitly states that an applicant must answer yes if he performed any work, and an applicant must report earnings in the week he performs the work, not when he is paid for it.” Langevin does not dispute that he

performed work during various periods of unemployment eligibility. It is clear that he failed to comply with the disclosure requirements. It is a plausible inference from the record that Langevin did not have a good-faith belief in the correctness of his nondisclosure and thereby committed fraud. Because the evidence supports that inference, we defer to the credibility determination of the ULJ.

Affirmed.