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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-966**

Mariola Minta,
Relator,

vs.

UCare Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 8, 2011
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 23970748-4

Mariola Minta, Ramsey, Minnesota (pro se relator)

UCare Minnesota, Minneapolis, Minnesota (respondent)

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

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's (ULJ) decision that she fraudulently received unemployment benefits and is therefore subject to a statutory penalty. We affirm.

FACTS

Relator Mariola Minta was employed as an operations manager by UCare Minnesota from October 2004 through July 23, 2009. After being laid off, Minta applied for benefits, and established an unemployment-benefit account with the Department of Employment and Economic Development (DEED). On her application, Minta answered "no" to the question of whether she had received, or expected to receive, "severance or any other separation payments" upon separation from employment. At that time, Minta had in her possession a proposed separation agreement that would award her a \$17,080.80 lump-sum severance payment and \$2,946 in post-employment health benefits. Minta signed the separation agreement on August 1, 2009.

Minta first requested unemployment benefits on August 4. That week, and every subsequent week, Minta was required to indicate whether she received income from any other source that she had not previously disclosed. Minta consistently denied receiving additional income from other sources, even though she had received the lump-sum severance payment and post-employment health benefits.

In December 2009, DEED became aware that Minta had received some type of payment from UCare after separating from employment. DEED sent Minta a request for

information. When Minta failed to respond, DEED issued a determination of ineligibility. The determination prompted a response: Minta disclosed that she had received a severance payment from UCare in the gross amount of \$9,920.34. She did not disclose the health benefits that she had also received. DEED determined that Minta was overpaid benefits for seven weeks. Minta appealed, claiming her employer “doesn’t offer a severance package” and that her payment was actually made pursuant to a settlement agreement in which she agreed not to sue UCare.

A telephonic evidentiary hearing was held before a ULJ. The ULJ rejected Minta’s arguments that her failure to report the payment was an honest mistake. The ULJ determined that Minta was overpaid benefits of \$7,924, through fraud, and must repay that amount. The ULJ also assessed a penalty of \$3,169. Minta filed a request for reconsideration, and the ULJ affirmed his earlier decision, stating that “This judge is not persuaded that determinations of credibility in the original decision were erroneous.” This certiorari appeal follows.

D E C I S I O N

When reviewing an unemployment-benefits decision, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, conclusion, or decision are affected by an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008).

Minnesota law provides that an applicant is not eligible to receive unemployment benefits for any week if the applicant

is receiving, has received, or has filed for payment, equal to or in excess of the applicant's weekly unemployment benefit amount, in the form of:

...

(2) severance pay, bonus pay, sick pay, and any other payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but only if the payment is considered wages at the time of the payment under section 268.035, subdivision 29.

Minn. Stat. § 268.085, subd. 3(a) (Supp. 2009).

Minnesota law further provides:

Any 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. After the discovery of facts indicating fraud, the commissioner must make a determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund. In addition, the commissioner must assess a penalty equal to 40 percent of the amount fraudulently obtained.

Minn. Stat. § 268.18, subd. 2(a) (Supp. 2009).

The issue of whether Minta committed a fraudulent act is a question of fact. *See Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that whether an employee committed a particular act is a question of fact). We review a ULJ's findings of fact in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Id.* Whether an applicant knowingly failed to disclose material facts while requesting benefits involves the credibility of the applicant's

testimony which lies within the province of the ULJ. *Cash v. Comm’r of Econ. Sec.*, 352 N.W.2d 535, 537 (Minn. App. 1984). “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). This court will affirm the ULJ’s credibility determinations if “[t]he ULJ’s findings are supported by substantial evidence and provide the statutorily required reason for [his] credibility determination.” *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). Substantial evidence is defined as: “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

The ULJ determined that “[a] preponderance of the evidence in this case demonstrates [Minta] received greater benefits than [she] was entitled to by knowingly and repeatedly failing to disclose the severance payments she received.” Minta asserts that the ULJ erred in this determination and requests that this court modify the ULJ’s decision to remove the fraud determination and any resulting penalties. Minta does not contest that she was overpaid benefits.

The crux of Minta’s argument is that the ULJ should have believed her testimony showing that her nondisclosure was an “honest misunderstanding.” But the ULJ expressly rejected Minta’s claim that her nondisclosure resulted from an honest mistake.

The ULJ found that Minta's "attempt to characterize the payment as a sort of settlement for a to-be-filed lawsuit is disingenuous and unsupported by the facts." The ULJ explained the reasons for this credibility determination as follows:

She kept the fact that there was any payment at all secret for as long as she could. When that charade ended, she undervalued the payments and provided a bare minimum of information. At no point did she make any serious attempt to contact the department to verify that she need not report the \$20,026.80. Minta was not some unsophisticated line worker. She was in management and earned over \$80,000 per year. The facts and circumstances as a whole do not support her position of ignorance or mistake.

These statements adequately explain the ULJ's determination that Minta's "honest-misunderstanding" claim was not credible, and the credibility determination finds support in the record. The record shows that upon her separation from employment, Minta signed an agreement that entitled her to a "lump sum payment" of \$17,080.80. Paragraph two of the agreement expressly identifies the payment as "severance." Yet when she applied for unemployment benefits and DEED specifically asked whether she had received, or expected to receive, a "severance" payment or "any other separation payments," Minta answered "no." The record also shows that Minta did not respond to DEED's request for information about the payment until after DEED deemed her ineligible and billed her for the overpayment of benefits. She then made minimal disclosures. This evidence substantially supports both the ULJ's credibility determination and his determination that Minta committed fraud as defined by Minn. Stat. § 268.18, subd. 2(a).

Minta argues that hers is not the “profile of a person capable of fraud.” She offers several reasons why the ULJ should have credited her “honest-misunderstanding” claim, including her “challenging mindset” at the time of nondisclosure, which she attributes to the stress associated with abrupt unemployment, a family medical crisis, and her own health issues. “There is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2008). While these explanations could support a finding that Minta did not knowingly fail to disclose her receipt of severance pay, because the ULJ’s credibility determination is supported by substantial evidence, we will not disturb it. *See Ywswf*, 726 N.W.2d at 533 (stating that this court will affirm the ULJ’s credibility determination when it is supported by substantial evidence).

Minta also argues that DEED provided insufficient and conflicting information when she responded to its original demand for repayment. Minta asserts that she called DEED and was told that “there was nothing to repay” and that this conversation confirmed her honest belief that the payment from UCare was not “severance.” Minta further argues that DEED’s website is “not user friendly.” These arguments are not relevant to our review of the ULJ’s decision. *See* Minn. Stat. § 268.105, subd. 7(d) (setting forth the standard of review).

Affirmed.

Dated:

Judge Michelle A. Larkin