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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1170**

Christopher Shimota,
Relator,

vs.

Al Shimota's Restoration and Repair,
Respondent,

Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 24884736-3

Christopher L. Shimota, Montgomery, Minnesota (pro se relator)

Al Shimota's Restoration & Repair, Prior Lake, Minnesota (respondent)

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

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

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Relator Christopher Shimota challenges the findings of an unemployment law judge (ULJ) that he fraudulently collected unemployment benefits, arguing that it was only by mistake that he applied for benefits during weeks that he also worked. Because the ULJ's determination is supported by substantial evidence in the record, we affirm.

FACTS

Shimota established an unemployment-benefit account with the Minnesota Department of Employment and Economic Development (DEED) that became effective at the end of December 2008. During 2009 he applied for unemployment benefits 32 times. For 12 of the weeks that he received benefits he also worked 40 hours at Al Shimota's Restoration and Repair. During each week that he worked and applied for a benefit payment he answered "no" on the application form to the question whether he worked and to the question whether he received income during that week. Therefore, he received his full weekly benefit payment in addition to his weekly wages each of those weeks. For five weeks Shimota neither worked nor applied for unemployment benefits.

During a routine cross-check of Shimota's benefit payments with unemployment tax information submitted by his employer, DEED noticed a discrepancy in Shimota's file. DEED confirmed with Shimota's employer that he actually worked during weeks that he collected unemployment benefits. DEED then issued Shimota a determination of ineligibility and a fraud determination, and ordered him to repay the fraudulently obtained benefits and a 40% penalty.

Shimota appealed the determination of ineligibility and fraud determination to a ULJ. The ULJ held a hearing with Shimota and his mother, who also works for Al Shimota's Restoration and Repair. After the hearing, the ULJ determined that Shimota was overpaid benefits and committed fraud as defined by Minn. Stat. § 268.18, subd. 2(a) (2008). Shimota filed a request for reconsideration with the ULJ, who affirmed his previous decision. This certiorari appeal followed.

D E C I S I O N

This court may affirm, reverse and remand, or modify the decision of a ULJ if “the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision” are affected by an error of law or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (2008). 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). If it is determined that an applicant obtained unemployment benefits by fraud, the applicant must promptly repay the unemployment benefits, and the commissioner “shall assess a penalty equal to 40 percent of the amount fraudulently obtained.” *Id.*

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. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether the applicant knowingly failed to disclose material facts while requesting benefits

involves the credibility of the applicant's testimony. *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 her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

Shimota argues that he did not intentionally apply for unemployment benefits for weeks in which he also worked. He testified that he was mistakenly requesting benefits during the week in which he was employed instead of the prior week when he was actually unemployed, and that "[i]t's all off by one week." He further testified that "when I go on there to request benefit payments, the dates are wrong from what I apply for" and that he did not notice that the form indicated the date of the week for which he was requesting benefits.

The ULJ did not find Shimota's testimony credible. The ULJ did not believe Shimota's claim that he did not see the dates of the period for which benefits were being requested, noting that they were clearly written in bold type on the top of the form.

In examining the record, there is no discernable pattern between the weeks Shimota worked and received a benefit payment and the weeks he did not work and did not receive a benefit payment. Even if Shimota was confused about the weeks he worked and the weeks he requested benefits, there were only five weeks that he did not

request a benefit and was not paid, while there were 12 instances of alleged fraud. The fourth quarter of the year especially undercuts any argument of confusion. In that quarter, there was no week in which he was unemployed and failed to file for unemployment benefits, while he received a benefit payment for six weeks in which he also worked. The ULJ provided his reasons for disbelieving relator's testimony and that reasoning is substantially supported by the record. This court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Finally, Shimota argues that he should only owe payments for seven of the weeks in 2009. He appears to reach this number by subtracting the five weeks that he did not work or receive a benefit from the twelve weeks in which he did both. However, there is nothing in the record to indicate that Shimota has ever requested unemployment benefits for those five weeks. He may file a late request for payment from those weeks, but the statute does not allow him to simply shift the request from a week in which he actually worked to a week in which he did not work and did not request a benefit payment. *See* Minn. Stat. § 268.086, subd. 5(b) (2008). Moreover, late requests for benefits are only granted for good cause. *Id.*

Because substantial evidence supports the ULJ's credibility determination, and the ULJ's credibility assessment is determinative on the issues of overpayments and fraud, we affirm.

Affirmed.