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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1279**

Sharon Stocker,
Relator,

vs.

Midwest of Cannon Falls,
Respondent,
Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 24473983-3

Sharon Stocker, South St. Paul, Minnesota (pro se relator)

Midwest of Cannon Falls, Greenwich, Connecticut (respondent employer)

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

Considered and decided by Kalitowski, Presiding Judge; Stauber, Judge; and Collins, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this certiorari appeal, relator challenges the determination of the unemployment law judge (ULJ) that she was temporarily ineligible to receive unemployment benefits

because she withdrew funds from a retirement account contributed to by her employer. We affirm.

FACTS

Relator Sharon K. Stocker worked full-time for respondent Midwest of Cannon Falls, Inc. (Midwest), a home and seasonal décor distributor, from August 1982 until she was laid off on May 6, 2009. In June 2009, relator withdrew a lump sum of \$42,896.55 from her 401(k) retirement plan that was contributed to by Midwest. Relator did not roll this lump sum payment into a qualified retirement plan or account and, because of her age, was not subject to an early withdrawal penalty.

Relator first established a benefit account in February 2009 in anticipation of being laid off, but did not begin to receive payments until her employment ended and after her severance payments ceased. Relator began to collect weekly unemployment benefits of \$327 beginning in November 2009. Relator then collected benefits for nine weeks, receiving a total of \$2,943. When relator's benefit year ended on January 30, 2010, she established a new benefit account. In response to a question in the online application, relator reported her 401(k) payout. The Minnesota Department of Employment and Economic Development (DEED) followed up on relator's disclosure and determined that relator was temporarily ineligible to receive unemployment benefits from June 20, 2009, through November 6, 2010, based on the amount of the lump sum payment she received. DEED thus determined that relator had been overpaid \$2,943.

Relator appealed this determination and an evidentiary hearing was held by a ULJ. Relator acknowledged that she received the lump sum retirement payment and did not

roll it over into a qualified plan or account, but contended that she did not know this could make her ineligible for unemployment benefits. The ULJ determined that relator was temporarily ineligible to receive benefits from June 2009 through November 2010, and thus was overpaid benefits in the amount of \$2,943. Relator filed a request for reconsideration and the ULJ affirmed her initial decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2008).

This court reviews the ULJ’s factual findings “in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In doing so, we “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.* But statutory construction presents a question of law, which we review de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

The general requirements for unemployment-benefits eligibility are set forth in Minn. Stat. § 268.085, subd. 1 (2008). But an applicant who satisfies these requirements

may nonetheless be ineligible for unemployment benefits if the applicant receives certain pension or retirement payments from a plan contributed to by his or her employer. Minn. Stat. § 268.085, subd. 3 (Supp. 2009).¹ The relevant portion of this statute provides as follows:

Subd. 3. **Payments that delay unemployment benefits.** (a) An applicant is not eligible to receive unemployment benefits for any week with respect to which 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:

....

(3) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except Social Security benefits that are provided for in subdivision 4. The base period employer is considered to have contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1).

If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is not considered to have received a payment if (i) the applicant immediately deposits that payment in a qualified pension plan or account, or (ii) that payment is an early distribution for which the applicant paid an early distribution penalty under the Internal Revenue Code, United States Code, title 26, section 72(t)(1).

Minn. Stat. § 268.085, subd. 3(a)(3). To determine the number of weeks an applicant is ineligible for benefits, Minn. Stat. § 268.085, subd. 3(b)(2), provides that “if the

¹ The 2009 amendments to Minn. Stat. § 268.085, subd. 3, were made retroactive to December 1, 2008, and thus apply to this action. 2009 Minn. Laws ch. 78, art. 3, § 7, at 591.

payment is made in a lump sum, that sum is divided by the applicant's last level of regular weekly pay from the employer.”

It is undisputed that relator withdrew a lump sum from her 401(k) retirement plan. It is also undisputed that this retirement plan was contributed to by Midwest. Relator does not meet either statutory exception as she did not roll the lump sum into a qualified plan or account and she did not pay an early distribution penalty.² DEED and the ULJ also properly calculated the period during which relator's eligibility for benefits is delayed. Prior to being laid off, relator was earning \$14.91 per hour working 40 hours per week, for total weekly pay of \$596.40. Her lump sum payout, \$42,896.55, is the equivalent of 72 weeks of her regular weekly pay. Accordingly, her eligibility for unemployment benefits is delayed for 72 weeks from the date she received the payout, a period from June 20, 2009 through November 6, 2010.

Relator thus presents no valid legal challenges to the ULJ's decision. Relator instead makes several hardship arguments. She argues that she was not asked about 401(k) payments during the time she was receiving benefits, that she did not realize her lump sum payout could affect her benefits, and that DEED waited too long to determine her ineligibility. Relator also argues that she needed to make the withdrawal in order to pay bills related to her husband's medical expenses. Although we are sympathetic,

² It is unclear from the record whether relator was exempt from an early distribution penalty because she was 59 1/2 years old at the time of the withdrawal or because she met another statutory exemption. *See, e.g.*, 26 U.S.C. § 72(t)(2)(A)(v) (2006) (employee is exempt from an early distribution penalty if the withdrawal is made after the employee separates from his or her employer and the employee is 55 years of age or older). However, it is undisputed that relator did not pay an early distribution penalty.

Minnesota unemployment law expressly prohibits equitable relief. Minn. Stat. § 268.069, subd. 3 (2008) (“There is no equitable or common law denial or allowance of unemployment benefits.”). An applicant’s reason for withdrawing funds from a retirement account is simply not relevant to determining the applicant’s eligibility for benefits under Minn. Stat. § 268.085, subd. 3(a)(3).

Further, relator acknowledged that when she established her benefits account she received a DEED handbook which stated that pension or 401(k) payments could affect her eligibility for unemployment benefits. She also acknowledged that she was asked each week when requesting benefits online whether she received income from any other source. Finally, although DEED did not determine relator’s ineligibility until after she had received benefits for nine weeks, this was only because DEED was not aware of relator’s 401(k) payment until she disclosed it. Minnesota unemployment law permits DEED to “issue a determination on an issue of ineligibility at any time within 24 months from the establishment of a benefit account based upon information from any source.” Minn. Stat. § 268.101, subd. 2(e) (2008).

Because relator received unemployment benefits to which she was not eligible, she must repay them. Minn. Stat. § 268.18, subd. 1(a) (2008). If relator is unable to repay the benefits, DEED may offset the overpayments from future unemployment benefits to which relator may be entitled to. Minn. Stat. § 268.18, subd. 1(b) (2008).

Affirmed.