

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1025**

Darius Motarjemi,
Relator,

vs.

Metropolitan Council,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed May 19, 2009
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 20235837-3

Darius Motarjemi, 6625 Xerxes Avenue South, Richfield, MN 55423-1931 (pro se relator)

Metropolitan Council, 390 Robert Street, St. Paul, MN 55101-1805 (respondent)

Lee B. Nelson, Katrina I. Gulstad, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and Randall, Judge.*

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In his pro se brief, relator Darius Motarjemi challenges the determination of the unemployment law judge (ULJ) affirming an earlier decision that relator failed to participate in his appeal from the Department of Employment and Economic Development (DEED) determination finding him ineligible for unemployment benefits. Because relator failed to present evidence to show good cause for not participating in his evidentiary hearing, the ULJ did not abuse its discretion in dismissing relator's appeal, and we affirm.

DECISION

On review, this court may affirm a ULJ's decision, remand it for further proceedings, or reverse or modify it

if the substantial rights of the petitioners may 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 the entire record as submitted; or (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd 7(d) (2008). The court gives de novo review to legal questions involving statutory interpretation. *Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

Minn. Stat. § 268.105, subd. 1(d) (2008) provides that the ULJ may dismiss an appeal "if the appealing party fails to participate in the evidentiary hearing" and the ULJ

makes a determination that the appealing party did not show good cause for failing to participate. The statute further instructs that a party who fails to participate “is considered to have failed to exhaust available administrative remedies.” *Id.* However, a party who fails to participate “shall be informed of the requirement” that he or she has the burden of filing a request for reconsideration and establishing good cause for failing to participate. *Id.* “Good cause” for purposes of this section is “reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” Minn. Stat. § 268.105, subd. 2(d) (2008).

In August 2007, relator’s employer, Metropolitan Council–Metro Transit (Metro Transit), terminated relator from his employment as a bus driver after he became belligerent and argumentative with a supervisor. DEED ruled that relator was ineligible to receive benefits because he had been discharged for misconduct. Relator challenged his ineligibility determination, and an evidentiary telephone hearing was scheduled for February 7, 2008 to determine whether relator was dismissed for misconduct and therefore ineligible to receive benefits. At the beginning of this hearing, relator hung up the phone during a verbal disagreement regarding whether the ULJ had received documents sent by relator the day before. The ULJ then called relator back, and the parties agreed to continue the hearing until February 29.

During the initial part of the second evidentiary telephone hearing on February 29, relator again hung up after the ULJ rejected relator’s demand that Metro Transit not be allowed to call a certain employee as a witness and that Metro Transit should be required to call a different witness whom relator had allegedly subpoenaed.

The ULJ then ruled that relator failed to participate in the hearing and was ineligible to receive benefits, and that the appeal would be dismissed unless relator filed a request for reconsideration and showed good cause for failure to participate. Rather than filing a request for reconsideration, relator requested the removal of the ULJ from the case, which the ULJ treated as a request for reconsideration, and denied.

In this certiorari appeal, relator argues he is entitled to unemployment benefits because the ULJ yelled and became angry, which “scared him off.” The record indicates otherwise: relator was terminated from his bus driver position for becoming belligerent; he hung up on the ULJ in anger during the first evidentiary hearing; and he hung up again in irritation at the beginning of the second hearing. Relator’s behavior does not amount to good cause for failing to participate in either hearing, nor is it a “reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.” Minn. Stat. § 268.105, subd. 2(d). The record supports the ULJ’s finding that relator failed to participate and failed to provide justification or good cause for not participating in the evidentiary hearing.

Because relator presented no evidence that would support a finding of good cause for failing to participate in the evidentiary hearings, the ULJ did not abuse its discretion in dismissing the appeal.

Affirmed.