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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1317**

Safiyo Osman,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed May 11, 2010
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 20522336-6

Jay W. Ramos, Central Minnesota Legal Services, St. Cloud, Minnesota (for relator)

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

Considered and decided by Larkin, Presiding Judge; Toussaint, Chief Judge; and Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Relator Safiyo Osman appeals the decision of the unemployment-law judge (ULJ) that earlier final decisions of respondent Minnesota Department of Employment and

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

Economic Development (department) could not be challenged in an appeal of a recent determination. Specifically, relator argues that (1) the February 2008 ineligibility determination by the department violated her rights to procedural due process; (2) the May 2008 overpayment determination was an untimely attempt by the department to amend the February 2008 determination and is therefore void; and (3) equity entitles her to retain the disputed unemployment benefits. We affirm.

DECISION

When reviewing a ULJ's decision we may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the petitioner 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 views 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). But when addressing a question of law, we are "free to exercise . . . independent judgment." *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

Relator applied for benefits and established an unemployment-benefits account with the department in January 2008. On February 26, 2008, the department determined that relator was ineligible to receive benefits. Relator's ineligibility commenced on January 20 and was to continue until she was "available for and . . . actively searching for

existing employment that is consistent with [her] restrictions or qualifications.” She was advised that the deadline to file an appeal was March 17, 2008. Relator did not appeal this determination, which then became final.

On May 16, 2008, the department issued an amended determination. This determination stated, among other things, that the February 2008 determination remained in effect; relator had received an overpayment of benefits in the amount of \$2,550; and the deadline to file an appeal from this determination was June 5, 2008. When no timely appeal was filed, the May 2008 determination became final. On July 8, 2008, relator filed an appeal of the May 2008 determination. The ULJ dismissed relator’s appeal as untimely, and relator did not pursue the matter further.

Relator again applied for benefits and established a new account with the department in February 2009. On March 6, 2009, the department issued a determination explaining that relator had been ineligible for benefits from January 20 to June 29, 2008. It further stated that the previous denial determination was ended and that she may be eligible for benefits if all other eligibility requirements were met. This determination reiterated that relator had received an overpayment of \$2,550. Relator timely appealed this determination; the ULJ reached the same decision as the department and affirmed on reconsideration. The March 2009 determination is the subject of this certiorari appeal.

Relator does not dispute that she received unemployment benefits in the amount of \$2,550 from January through May 2008. Instead, she contends that no overpayment occurred because she was eligible for these benefits. Specifically, relator argues: (1) the February 2008 determination by the department did not adequately protect her rights to

procedural due process; (2) the May 2008 determination by the department is void because it was an untimely attempt by the department to amend the February 2008 determination; and (3) equity entitles her to retain the unemployment benefits she received.

But the department's decisions regarding relator's eligibility and her receipt of an overpayment were finally resolved long before the March 2009 determination by the department. The February 2008 determination stated that relator was ineligible for benefits as of January 20, 2008, and this determination became final in March 2008. The May 2008 determination by the department stated that relator had received an overpayment of \$2,550, and this determination became final in June 2008, when the allowed time within which to appeal expired. We cannot revisit the February 2008 and May 2008 final decisions by the department in the context of the present appeal of the ULJ's decision and affirmance on reconsideration regarding the department's March 2009 determination. *See Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 113 (Minn. App. 1992) (holding that a party may not challenge a final determination in the context of a later appeal of a different determination).

Relator relies upon *Rowe v. Dep't of Employment & Econ. Dev.*, 704 N.W.2d 191 (Minn. App. 2005), to support her argument that we should rule that the May 2008 amended determination by the department—in which the overpayment is first found—is void because the department then had no jurisdiction to amend the February 2008 determination. In *Rowe*, a ULJ issued two decisions. *Rowe*, 704 N.W.2d at 193. After the deadline to appeal the decisions had passed, the ULJ issued an amended decision, and

Rowe appealed. *Id.* at 194. This court ultimately concluded that the ULJ’s amended decision was not valid because the ULJ had no jurisdiction to make an amended decision after the time for an appeal of the original decisions had passed. *Id.* at 196. This court also held that Rowe’s appeal of the original decisions was untimely and the original decisions were final. *Id.* at 194, 196–97.

Rowe did not change the longstanding rule that a determination by the department becomes final if not timely appealed. *See* Minn. Stat. § 268.101, subd. 2(f) (2008) (stating that a determination by the department is final unless an appeal is filed by the applicant within 20 calendar days after the determination is sent); *Smith*, 483 N.W.2d at 112 (“[T]here are no extensions or exceptions to the . . . appeal period.”). This court in *Rowe* considered the validity of the amended decision because Rowe filed a timely appeal of the amended decision; this court did not revisit the ULJ’s original decisions, from which no timely appeal had been taken. Here, relator did not timely appeal the department’s February 2008 and May 2008 determinations, and we are unable now to resurrect them.

Because relator received unemployment benefits to which she was not entitled, she must repay the benefits to the trust fund. *See* Minn. Stat. § 268.18, subd. 1(a) (2008) (stating that an applicant must repay benefits to which she is not entitled). Relator’s argument that she may keep the benefits for equitable reasons is unavailing. *See* Minn. Stat. § 268.069, subd. 3 (2008) (“There is no equitable . . . allowance of unemployment benefits.”).

Affirmed.