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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0253**

Joyce A. Barry,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed March 4, 2008
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 13624 06

Joyce A. Barry, 621 4th Street S.E., Minneapolis, MN 55414 (pro se relator)

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

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and
Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator Joyce Barry disputes the adequacy of evidence to support the
determination that she was ineligible for previously paid benefits and thus must make

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

repayment and pay a penalty for fraud. We affirm on this issue and on relator's dispute on the fairness of the hearing process.

FACTS

In 2006, the Department of Employment and Economic Development determined that relator must repay \$3,150 in unemployment benefits and pay a \$787 penalty for fraudulent overpayment of unemployment benefits. Following relator's appeal and a de novo evidentiary hearing, the unemployment law judge (ULJ) affirmed the department's decision, finding that relator intentionally falsified weekly unemployment reports during a period of nine weeks by reporting that she had not worked or received any earnings when in fact she had "worked substantial hours during [each of the nine weeks as an independent contractor] and received pay totaling approximately \$12,182."

D E C I S I O N

1.

Relator contends that there is insufficient evidence to support the ULJ's determination that because of fraud she was not entitled to benefits she was paid. We are to reverse or modify the decision if relator's substantial rights have been prejudiced because the decision is affected by legal error, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). Substantial evidence means: "(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; and (5) evidence considered in its entirety." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 668 (Minn.

1984). We review the ULJ's findings in the light most favorable to the decision and will not disturb findings that are reasonably supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Minn. Stat. § 268.18, subd. 2(a) (2002), provides that it is fraud for an applicant to receive benefits by knowingly misstating or failing to disclose a material fact. Upon a showing of fraud, the statute requires repayment of wrongfully received benefits and the assessment of a penalty of 25 percent of the fraudulently obtained amount. *Id.* “Whether a claimant knowingly and willfully misrepresented or misstated material facts to obtain benefits involves the credibility of the claimant’s testimony.” *Burnevik v. Dep’t of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985) (addressing similar fraud provision under previous version of statute).

An applicant for unemployment benefits is not eligible to receive benefits for any week in which the applicant has earnings from, among other things, self-employment, equal to or in excess of her weekly unemployment benefit amount. Minn. Stat. § 268.085, subd. 5(a) (2002).

The ULJ found that relator requested and received unemployment benefits of \$350 per week for each of the nine weeks in question, that she represented to the department that she had not worked or received earnings during any week for which she received benefits, that she worked each week and received earnings greater than her benefit amount, and that her representations were intentionally false, leading to overpayment of benefits.

Relator questions the sufficiency of evidence that she intentionally misrepresented or misstated material facts. But undisputed evidence confirms the ULJ's findings that for each week for which relator received unemployment benefits, she reported that she had not worked and had no earnings when in fact she had worked as an independent contractor and had received earnings substantially greater than her unemployment benefit amount.

Relator argues that as an independent contractor her receipts were offset by numerous business expenses. Rejecting this contention, the ULJ concluded that relator "was unable to submit any substantial documentary proof of this and her tax return for 2003 shows that she had no such expenses." The record confirms that relator has continuously failed to substantiate offsetting expenses.

Relator insists that when she called the department about her independent contractor status, she was instructed to report that she had not worked or received income if her expenses exceeded her earnings. But this assertion is not material; neither the ULJ nor this court has any occasion to explore this assertion in light of the fact that the record does not establish that her expenses exceeded her income.

Finally, relator asserts that the proof of fraud was defeated by her own contact to the department about the benefits that later were challenged. This contention is also affected by relator's failure to show that her income was offset by expenses; her good will in reporting does not diminish the unquestionable willfulness in failing to report income well in excess of benefits.

2.

Relator contends that she was denied a fair hearing. The ULJ is to conduct an evidentiary hearing as an “evidence gathering inquiry” and not “an adversarial proceeding,” and “shall ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2006). The ULJ “shall exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2005); *see also Miller v. Int’l Express Corp.*, 495 N.W.2d 616, 618 (Minn. App. 1993) (official conducting the hearing has an obligation to recognize and interpret the parties’ claims, particularly when the parties are pro se). Each party may examine witnesses, cross-examine the other party’s witnesses, and offer and object to exhibits. Minn. R. 3310.2921.

Relator first argues that she was denied the right to compel the testimony of the first department investigator who handled her case and further denied the opportunity to cross-examine the successor investigator. Pursuant to its duties, the ULJ “may . . . issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property considered necessary as evidence in connection with the subject matter of an evidentiary hearing.” Minn. Stat. § 268.105, subd. 4 (2006). The ULJ may deny a subpoena request “if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious.” Minn. R. 3310.2914, subp. 1 (2005).

After first continuing the matter to decide relator’s requests for a subpoena, the ULJ concluded that relator “was unable to state with any specificity what relevant testimony [the first investigator] might give on her behalf and why his testimony was

needed. The [ULJ] has . . . determined that all relevant documents that the Department had possession of were submitted and received into the record.” Relator has failed to show that the content of the testimony of either investigator would be pertinent to the question of whether she had business expenses, the lynchpin for all of her defenses.

Relator next asserts that she had inadequate time to present evidence of her expenses, but this argument conflicts with the record. She claims to have incurred the expenses in the fall of 2003 while receiving unemployment benefits. Notations in the department file show requests for documentation of those expenses in December 2005 and August 2006. And relator was also afforded the opportunity to submit documentation of her expenses at her de novo hearing before the ULJ in November 2006. There is no merit in relator’s claim.

Finally, relator contends that the ULJ erred in admitting and considering her federal income tax returns. But relator has not cited any authority supporting her argument, and under department rules, “[a]ll competent, relevant, and material evidence, including records and documents in the possession of the parties which are offered into evidence, shall be part of the hearing record.” Minn. R. 3310.2922 (2005). Relator’s tax returns document her income and show that she did not claim any expenses. Her tax documents are relevant, and the ULJ did not err in considering them.

Affirmed.