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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1718**

Thomas J. Marthaler,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 8, 2011
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
Agency File No. 1027

Thomas J. Marthaler, Woodbury, Minnesota (pro se relator)

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

Considered and decided by Peterson, Presiding Judge; Schellhas, 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UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges a determination by an unemployment-law judge that \$6,460 in unemployment benefits erroneously paid to him is recoverable under the Revenue Recapture Act. We affirm.

FACTS

Relator Thomas Marthaler established a benefit account with the Minnesota Department of Employment and Economic Development (DEED) effective August 3, 2008. Marthaler collected unemployment benefits from August 3, 2008, until November 30, 2009, when DEED determined that Marthaler had been ineligible to receive benefits since April 24, 2009, because he was a college student and was not willing to quit school to accept suitable employment.¹ Separately, after receiving updated medical information for Marthaler, DEED determined in January 2010 that Marthaler had been ineligible to receive unemployment benefits since April 19, 2009, because he was unable to work due to his bipolar disorder. Marthaler appealed both of these determinations.

As to DEED's first determination of ineligibility, on January 13, 2010, an unemployment-law judge (ULJ) decided that Marthaler was eligible for benefits because he was willing to discontinue his college classes to accept suitable employment. But as

¹ Marthaler was employed by Whelan Security from April 1, 2009, until April 24, 2009, when Marthaler informed Whelan that he could not continue his employment for several reasons, including that he had been diagnosed with bipolar disorder and was beginning to exhibit symptoms of the illness.

to DEED's second determination of ineligibility, on February 18, 2010, a different ULJ decided that Marthaler was ineligible for benefits since April 2009, because he was unavailable for suitable employment due to his bipolar disorder. Marthaler requested reconsideration of this decision. On May 19, 2010, the ULJ affirmed the decision, noting the first ULJ's eligibility decision but concluding that Marthaler was unavailable for suitable employment and not actively seeking suitable employment.

The appeal period for the ULJ's order of May 19, 2010, expired June 21, 2010. *See* Minn. Stat. § 268.105, subd. 7(a) (2010) (stating that a petition for writ of certiorari must be filed with the court of appeals within 30 calendar days of the ULJ's order on reconsideration); Minn. R. Civ. P. 6.05 (adding three days to statutory period for notices served by U.S. mail). On June 22, Marthaler filed an appeal, which this court dismissed as untimely.

DEED referred Marthaler's debt for the overpayment in the amount of \$6,460 to the Minnesota Department of Revenue under the Revenue Recapture Act and provided Marthaler with notice of the revenue recapture. Marthaler contested the recapture, and, after a *de novo* hearing, a ULJ concluded that DEED was properly pursuing recapture under the Revenue Recapture Act. Marthaler requested reconsideration, and the ULJ affirmed the order.

This appeal follows.

DECISION

This court may remand, reverse, or modify a decision of the ULJ if substantial rights of the applicant were prejudiced because the findings, conclusions, or decision are

affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). While we defer to the ULJ's findings of fact if they are substantially supported by evidence in the record, we exercise independent judgment with respect to questions of law. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

“A determination or amended determination that holds an applicant ineligible for unemployment benefits for periods an applicant has been paid benefits is considered an overpayment of those unemployment benefits.” Minn. Stat. § 268.101, subd. 6 (2010). Any applicant who “has received any unemployment benefits that the applicant was held not entitled to, must promptly repay the unemployment benefits to the trust fund.” Minn. Stat. § 268.18, subd. 1(a) (2010). The Revenue Recapture Act permits a state agency to satisfy a debt owed to the agency by garnishing a debtor's income-tax refund. Minn. Stat. §§ 270A.01–.12 (2010). The act defines a “debt” as a “legal obligation of a natural person to pay a fixed and certain amount of money, which equals or exceeds \$25 and which is due and payable to a claimant agency.” Minn. Stat. § 270A.03, subd. 5(a). For purposes of revenue recapture, the overpaid unemployment benefits that DEED paid to Marthaler are a “debt.”

Marthaler challenges the constitutionality of the Revenue Recapture Act, alleging that it violates the Equal Protection Clause. But Marthaler's challenge is based on his dissatisfaction with the ULJ's decision that he is ineligible to receive unemployment benefits, which resulted in the overpayment determination. That decision is final and is not the subject of this appeal. *See* Minn. Stat. § 268.105, subd. 2(f) (2010) (stating that

an order issued upon reconsideration affirming previous decision “is the final department decision on the matter and is final and binding . . . unless judicial review is sought under subdivision 7”). In subsequent proceedings concerning an overpayment determination, a relator is prevented from arguing any error in the prior disqualification decision that is a final decision. *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 113 (Minn. App. 1992). Therefore, we do not consider Marthaler’s constitutional argument.

Marthaler also argues that he did not receive a fair hearing on revenue recapture because the ULJ “refused to listen to any evidence” and because DEED did not participate. Marthaler points to two instances during the hearing when the ULJ stated that he could not consider issues concerning the decision of ineligibility from which Marthaler did not timely appeal.

The Revenue Recapture Act sets forth notice and hearing requirements for state agencies to recapture debts by withholding tax refunds. Minn. Stat. §§ 270A.08, .09. A debtor contesting a setoff claim by DEED “shall have a hearing conducted in the same manner as an appeal under section 268.105.” Minn. Stat. § 270A.09, subd. 1a. Here, the ULJ’s statements during the hearing do not demonstrate unfairness to Marthaler; the statements demonstrate that the ULJ properly limited the scope of the hearing to whether Marthaler’s overpayment debt is properly recoverable through the Revenue Recapture Act. And Marthaler provides no authority for his claim that his hearing was unfair because DEED did not participate. The record shows that DEED complied with section 270A.08 by sending written notice of revenue recapture to Marthaler and affording him a

de novo hearing on DEED's claim. We conclude that Marthaler received a fair and complete evidentiary hearing that complied with sections 270A.09 and 268.105.

The ULJ did not err by concluding that the overpaid unemployment benefits totaling \$6,460 is properly recoverable through the Revenue Recapture Act.

Affirmed.