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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1171**

Edward Misterek,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed March 25, 2013  
Affirmed  
Bjorkman, Judge**

Department of Employment and Economic Development  
File No. 29509263-2

Edward Patrick Misterek, Richfield, Minnesota (pro se relator)

Lee B. Nelson, Colleen Timmer, Minnesota Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department of Employment and  
Economic Development)

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Relator challenges the determination that he received unemployment benefits to  
which he is not entitled. Relator argues that respondent should not be permitted to

reconsider its initial decision that he was entitled to benefits and that it is unfair to require him to repay benefits he erroneously received through no fault of his own. We affirm.

## **FACTS**

Relator Edward Misterek established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED), effective April 5, 2009; he exhausted that account on October 24. He then received federal extended unemployment benefits until April 4, 2010, when he established a new unemployment-benefits account with DEED. He exhausted the 2010 account on August 7 and again received extended benefits based on his 2009 benefits account. Misterek established a new unemployment-benefits account with DEED on April 3, 2011. He exhausted the 2011 account on July 30 and began receiving extended benefits based on his 2009 benefits account. After exhausting those benefits on August 20, Misterek began receiving extended benefits based on his 2010 account. Following a routine file review, DEED determined that Misterek had not established eligibility for extended benefits based on the 2010 account before establishing the 2011 account and thus was not entitled to receive extended benefits after August 20, 2011. DEED notified Misterek of the error and that he must repay the benefits he received after August 20. Misterek appealed.

After a hearing, an unemployment-law judge (ULJ) determined that DEED erroneously paid Misterek extended benefits based on his 2010 account and that he must repay the \$2,476 he received as a result of that error. Misterek sought reconsideration, and the ULJ affirmed. This certiorari appeal follows.

## DECISION

We review a ULJ's order to determine whether it is "(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) (2012). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb them on appeal when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review questions of law de novo. *Id.*

Misterek does not challenge the determination that he is not entitled to the federal extended benefits he received after August 20, 2011, based on his 2010 benefit account. Rather, he argues that he should not be required to repay the benefits because (1) reconsideration of his benefit account was improper absent an appeal or notice that his account was being reviewed and (2) he relied on the benefits and should not be penalized for DEED's error.<sup>1</sup> We address each argument in turn.

First, Minnesota law expressly permits DEED to reconsider a benefit account "at any time within 24 months from the establishment of a benefit account . . . and make an amended determination if the commissioner finds that the wage credits listed in the determination were incorrect for any reason." Minn. Stat. § 268.07, subd. 1(e) (2012).

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<sup>1</sup> Misterek also argues that "the amount of the first extension [should] be forgiven." It is unclear what Misterek means by "the first extension," but we observe that the overpayment at issue in this appeal includes only extended-benefit payments from the 2010 account and Minnesota law does not permit overpayments to be "forgiven." *See* Minn. Stat. § 268.069, subd. 3 (2012) (barring equitable allowance of benefits).

The law also expressly contemplates that reconsideration may result in a determination that the applicant was overpaid and must repay amounts to which the applicant was not entitled. *Id.*, subd. 1(f) (2012). DEED is not required to notify an applicant that it is reconsidering the applicant's benefit account; but in the event that an applicant's benefit status is changed, the applicant has the opportunity to be heard. *Id.*, subd. 3a (2012) (permitting appeal from determination or amended determination of benefit account). DEED promptly notified Misterek of its amended account determination; Misterek appealed and received the process to which he is entitled.

Second, Misterek's assertion that he should not be required to repay the benefits he received due to DEED's error seeks equitable relief that this court cannot provide. Neither Misterek's reliance on the funds nor his blamelessness in receiving benefits to which he is not entitled affects his statutory obligation to repay those benefits. "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) (2012). Minnesota law does not permit equitable allowance of unemployment benefits; overpayments must be repaid without exception. *See* Minn. Stat. § 268.069, subd. 3; *Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591-92 (Minn. App. 1990). Accordingly, there is no basis for the ULJ or this court to provide Misterek relief from the requirement to repay the \$2,476 he received in error.

Because it is undisputed that Misterek received unemployment benefits to which he is not entitled, the ULJ correctly determined that he must repay that overpayment.

**Affirmed.**