

A12-1283

RECEIVED IN THE LAW OFFICES

3

**STATE OF MINNESOTA
IN COURT OF APPEALS**

John Godbout,

Relator,

vs.

Minnesota Department of Employment
and Economic Development,

Respondent.

RELATOR'S BRIEF, ADDENDUM AND APPENDIX

Lee B. Nelson, ID # 77999
Department of Employment and
Economic Development
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul MN 55101-1351
651.259.7117

LAW OFFICES OF SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.
By: Charles H. Thomas, ID # 109058
Laura Melnick, ID # 168695
55 East 5th Street, Suite 400
St. Paul MN 55101
651.222.5863

Attorney for Respondent

Attorneys for Relator

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

Table of Authorities ii

Legal Issues Presented 1

Statement of the Case 3

Statement of the Facts 4

Standard of Review 9

Argument 11

 I. The ULJ’s decision denying relator a hearing on the overpayment
 because of untimeliness is inconsistent with due process of law 11

 II. DEED has inherent authority to reopen and correct erroneous
 decisions within the time allowed for appeal. When there is a
 failure of notice, the appeal time has not begun to run 17

Conclusion 18

Appendix

Addendum

TABLE OF AUTHORITIES

	Page
MINNESOTA CONSTITUTION	
Article I, § 7	1, 18
MINNESOTA STATUTES	
Minn. Stat. § 14.69(a)–(f)	9
Minn. Stat. § 268.042, subd. 1(a) (2011)	13
Minn. Stat. § 268.105, subd. 7(d) (2011)	9
Minn. Stat. § 268.18, subd. 2(b) (2005)	1, 11
Minn. Stat. § 268.18, subd. 2(b) (2011)	12
Minn. Stat. 268.19, subd. 1(a)(10)	14
MINNESOTA RULES	
Minn. Rules, Part 1400.8300	16
Minn. Rules, Part 3310.2922	10
UNITED STATES SUPREME COURT CASES	
<i>Mullane v. Central Hanover Bank & Tr. Co.</i> , 339 U.S. 306 (1950)	1, 11
MINNESOTA SUPREME COURT CASES	
<i>Anchor Cas. Co. v. Bongards Coop. Creamery Ass'n</i> , 253 Minn. 101, 91 N.W.2d 122 (1958)	2, 17
<i>Finden v. Klaas</i> , 266 Minn. 268, 128 N.W.2d 748 (1964)	1, 15
<i>Jenkins v. Am. Express Fin. Corp.</i> , 721 N.W.2d 286 (Minn. 2006)	10

<i>Markel v. City of Circle Pines</i> , 479 N.W.2d 382 (Minn. 1992)	10
<i>N. States Power Co. v. Minn. Pub. Utils. Comm'n</i> , 344 N.W.2d 374 (Minn. 1984)	9
<i>Ress v. Abbott Nw. Hosp., Inc.</i> , 448 N.W.2d 519 (Minn. 1989)	10
<i>Schmidgall v. FilmTec Corp.</i> , 644 N.W.2d 801 (Minn. 2002)	10
<i>Schulte v. Transportation Unlimited, Inc.</i> , 354 N.W.2d 830 (Minn. 1984)	1, 12, 13
<i>Stagg v. Vintage Place Inc.</i> , 796 N.W.2d 312 (Minn. 2011)	10

MINNESOTA COURT OF APPEALS CASES

<i>In re License of West Side Pawn</i> , 587 N.W.2d 521, 522 (Minn. App.1998), review denied (Minn. Mar. 30, 1999)	10
<i>Matter of Minnesota Public Utilities Commission Initiation of Summary Investigation</i> , 417 N.W.2d 274, 282 (Minn. App. 1987), review denied	16
<i>Nieszner v. Minn. Dept. of Jobs & Training</i> , 499 N.W.2d 832 (Minn. App. 1993)	2, 17
<i>Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1</i> , 775 N.W.2d 168 (Minn. App. 2009)	15
<i>Pfalzgraff v. Comm'r of Econ. Sec.</i> , 350 N.W.2d 458 (Minn. App.1984)	2, 17
<i>Rowe v. Dep't of Employment & Econ. Dev.</i> , 704 N.W.2d 191 (Minn. App. 2005)	2, 17
<i>St. Otto's Home v. Minn. Dep't of Human Servs.</i> , 437 N.W.2d 35 (Minn. 1989)	9
<i>Stassen v. Lone Mountain Truck Leasing, L.L.C.</i> , 814 N.W.2d 25 (Minn. App. 2012)	1, 13

MINNESOTA COURT RULES

M.R.Civ.Pro., Rule 60.02	15, 16
M.Gen.R.Prac., Rule 508(d)(1)	15

LEGAL ISSUES PRESENTED

1. Did the ULJ err in concluding that relator cannot obtain a hearing on the merits of the overpayment notice mailed to his former address in April, 2006, when relator acted with reasonable effort and diligence to dispute the claim and request a hearing when he received notice in September, 2010?

Raised before the Agency: Relator requested a hearing on October 7, 2010.

(App-4). Relator submitted testimony and evidence at the hearing held on April 4, 2012. (App-20).

The Agency's ruling: The ULJ determined that relator did not timely appeal the determination mailed on April 25, 2006. (App-22).

Issue Preserved for Appeal: Relator requested reconsideration of the ULJ's decision on timeliness. (App-24).

Most apposite authorities:

Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306 (1950)

Schulte v. Transportation Unlimited, Inc., 354 N.W.2d 830 (Minn. 1984)

Stassen v. Lone Mountain Truck Leasing, L.L.C., 814 N.W.2d 25 (Minn. App. 2012)

Finden v. Klaas, 266 Minn. 268, 128 N.W.2d 748 (1964)

Minn. Stat. § 268.18, subd. 2(b) (2005)

Minnesota Constitution, Article 1, § 7

2. Did the ULJ err in refusing to use DEED's inherent authority to correct an erroneous decision where relator proffered evidence that he did not receive the notice mailed to a former address?

Raised before the Agency: Relator's request for reconsideration of the ULJ's decision of April 6, 2012, argued that DEED had inherent authority to reopen an erroneous decision before the appeal period expired and that the failure of notice meant that relator's appeal time had not started. (App-25, 26).

The Agency's Ruling: The ULJ ruled that the determination was mailed to relator's last address of record, the determination indicated he was held overpaid, and the notice was proper. (App-30).

Issue Preserved for Appeal: Relator requested reconsideration. (App-25, 26).

Most Apposite Authorities:

Anchor Cas. Co. v. Bongards Coop. Creamery Ass'n, 253 Minn. 101, 91 N.W.2d 122 (1958)

Pfalzgraff v. Com'r of Econ. Sec., 350 N.W.2d 458 (Minn. App. 1984)

Nieszner v. Minn. Dept. of Jobs & Training, 499 N.W.2d 832 (Minn. App. 1993)

Rowe v. Dept. of Empl. & Econ. Devel., 704 N.W.2d 191 (Minn. App. 2005).

STATEMENT OF THE CASE

Relator received a billing statement for a \$19,463 unemployment benefits overpayment that DEED mailed to his mother's residence in September, 2010. (App-3). This was his first notice that DEED claimed he had been overpaid due to fraud. (App-21, Findings). After contacting DEED by telephone to find out about the claim, relator obtained counsel and submitted a letter on October 7, 2010, requesting a hearing. (App-4). ULJ Richard Mandell issued an Order on November 24, 2010. (App-7). The ULJ's order found that on April 25, 2006, DEED mailed a determination of overpayment to relator at his address on file with the Department. (App-8). ULJ Mandell's order dismissed the appeal as untimely. (App-9). Relator requested reconsideration by letter to the ULJ dated December 6, 2010. (App-10). On September 15, 2011, DEED issued notice that reconsideration had been requested. (App-14). On March 15, 2012, ULJ Mandell issued an order setting aside his findings and decision and ordering an evidentiary hearing to determine if the appeal was timely. (App-17). ULJ Christine Steffen conducted an evidentiary hearing on April 4, 2012, and issued a decision on April 6, 2012, finding that the appeal was untimely and that the ULJ had no jurisdiction to reach the merits. (App-20). Relator requested reconsideration by letter to the ULJ dated April 26, 2012. (App-24). ULJ Steffen issued an Order on June 21, 2012, affirming the initial decision. (App-28). Relator timely petitioned this Court for a writ of certiorari to review the decision of the ULJ. (App-30, 31).

STATEMENT OF THE FACTS

These are the salient facts of this case:

2005: Relator John Godbout worked for Plating Incorporated. (Add-4).

February 27, 2005: Relator applied for unemployment insurance benefits.

. *Id.*

March 2005-September 14, 2005: Relator received unemployment benefits. His last benefit check was issued September 14, 2005, for the week ending September 3, 2005.

Id.

February 14, 2006: Relator vacated the property on Edmund Avenue, and began a period of incarceration at the Ramsey County Correctional Facility. (Add-4, 10).

April 24, 2006: DEED mailed relator a Determination of Overpayment. He was still in jail and did not receive the notice. (App-1, Add-4).

October 17, 2006: Relator was released from jail after 8 months of incarceration. (Add-10). He never received any mail sent to him at the Edmund Avenue address, either during his incarceration or after his release. (Add-4).

October 17, 2006-September 2010: Relator was homeless, primarily residing at the Dorothy Day shelter on a mat on the floor but also going in and out of jail and halfway houses. (Add-5). For his most recent driver's license, relator gave the Department of Public Safety his mother's address in _____, because he had no other permanent address. He had gotten mail at his mother's home off and on for years. *Id.*

Mid-September 2010: Relator received a letter addressed to his mother's address from DEED dated September 7, 2010, telling him he owed DEED \$19,436 due to an overpayment of unemployment benefits. (App-3). Relator telephoned DEED and spoke with a DEED employee, Dan Martin. Mr. Martin told relator that DEED had based the overpayment on an anonymous tip that he was working for Yellow Cab while receiving benefits in 2005 (Add-1, -3), that he had failed to report his work or earnings to DEED, and that DEED had determined relator was overpaid unemployment benefits. (Add-6).

Late September 2010: Mr. Martin sent relator a packet of documents. The packet included a note from Mr. Martin dated September 22, 2010, recording what Martin had told relator. The end of the note stated, "I told him I would mail copies of related documents and he could send a letter of appeal." (Add-2-3).

September 30, 2010: Relator obtained counsel and his attorney spoke by telephone with Mr. Martin regarding relator's case. See, e.g., App-4-6 (letter to Director of DEED's overpayment unit requesting reissuance of notice or appeal). Mr. Martin informed counsel that the overpayment claim had been referred to the Minnesota Department of Revenue on September 30, 2006, and that a collection letter had been sent to relator on July 14, 2010, which letter was returned to Revenue as undeliverable. *Id.* Upon being contacted of the return by Revenue, DEED had then sought and obtained a different address for relator, resulting in issuance of the September 7, 2010, letter to relator at his mother's address. *Id.*

October 7, 2010: Relator through counsel sent a letter to the Director of DEED's overpayment unit requesting reissuance of the overpayment notice or an appeal. (App-4). The letter recounted counsel's conversation with Mr. Martin, presented relator's claim that he had never worked for Yellow Cab, asserted that relator had never received the original overpayment notice because he had vacated that address in February, 2006, some five months after he had stopped receiving unemployment benefits, and was residing in jail when the April, 2006, notice was mailed. *Id.* Relator requested that DEED reissue the determination so that relator might properly appeal it, or that DEED consider the letter as an appeal of the refusal to reopen. (App-6).¹

November 24, 2010: ULJ Richard Mandell issued an Order concluding that the "November 10, 2010," appeal was untimely made. (App-7-9).

December 6, 2010: Relator's Counsel submitted a Request for Reconsideration to ULJ Mandell. (App-10-13). Relator proffered an affidavit setting forth relator's personal circumstances during the period in question (Add-4-8); a statement from the Ramsey County Correctional Facility dated October 4, 2010, listing the dates of relator's incarceration in 2006 (Add-10); and a note from the Manager of St. Paul Yellow Taxi faxed on December 4, 2010, stating that relator "was not employed by Yellow Cab nor did he lease a taxi from us during 2005." (Add-9).

¹ Relator's counsel sent a second letter to DEED on November 10, 2010. (Exhibit 10, page 64).

March 15, 2012: ULJ Mandell issued an Order setting aside his earlier findings of fact and decision, and ordering an additional hearing “to determine if [relator] made a timely appeal.” (App-14-16).

April 4, 2012: A telephone hearing was held before ULJ Christine Steffen. Transcript (hereafter T), page 1. Relator testified that the September 7, 2010, letter from DEED, sent to his mother’s address, was the first time he learned about the fraud overpayment allegations against him. T. 23. In response to Judge Steffen’s question whether he had ever provided his mother’s address to DEED, Relator said, “There was no reason to give it to ‘em because I had my own address and I stopped receiving funds months before I left there.” *Id.* Relator testified that Mr. Martin had told him he had gotten relator’s current mailing address “off my driver’s license number.” T. 31. He explained that he never received anything from DEED “until that notice was sent to my mom’s house about late fee or interest whatever, \$19,000 or something. * * * I never knew nothin’ about none of this.” *Id.*²

April 6, 2012: ULJ Steffen issued a decision that relator did not timely appeal the overpayment determination. (App-22). ULJ Steffen found that relator did not receive the April, 2006, determination “because he was in jail.” (App-21). ULJ Steffen found that in

² Counsel noted to the ULJ that DEED had changed relator’s telephone number on its computer system on September 15, 2010 (see, Exhibit 13, page 71), eight days after sending the notice of overpayment to relator at his mother’s house. Counsel suggested that September 15, 2010, “would have been probably about the time that [relator] had called to question this overpayment.” T. 32.

September, 2010, DEED found relator's mother's address and mailed a billing statement to that address. She found that "This was the first time he had heard of the overpayment, penalties and interest." *Id.* Judge Steffen found that relator's address of record with DEED was changed to his mother's address on September 15, 2010. She found that relator "then called [DEED] several times inquiring about the overpayment." *Id.* She found that relator then notified DEED that he was being represented by counsel and filed an appeal, which was dismissed as untimely. *Id.* ULJ Steffen determined that the statute "does not contain any exceptions to the 20 day (or in 2006, 30 day) appeal period, even for applicants who have moved and did not receive the determination." App-21-22. She concluded that without a timely appeal, she did not have jurisdiction "to reach the merits of this appeal." (App-22).

April 26, 2012: Relator filed a request for reconsideration of ULJ Steffen's decision. (App-24-26).

June 21, 2012: ULJ Steffen issued a decision on reconsideration affirming her original decision. (App-27-30).

STANDARD OF REVIEW

This Court reviews the decision of the Unemployment Law Judge under the provisions of Minn. Stat. § 268.105, subd. 7(d) (2011):

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner 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 view of the entire record as submitted; or
- (6) arbitrary or capricious.

This statutory language is essentially identical to Minn. Stat. § 14.69(a)–(f), the Minnesota Administrative Procedure Act standard for judicial review of decisions of other state administrative agencies.

“When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.” *St.*

Otto's Home v. Minn. Dep't of Human Servs., 437 N.W.2d 35, 39-40 (Minn. 1989)

(citations omitted). “We presume the agency's decision . . . is correct, but the court may reverse an agency decision if the decision was affected by an error of law.” *N. States*

Power Co. v. Minn. Pub. Utils. Comm'n, 344 N.W.2d 374, 377 (Minn. 1984). When

addressing a question of law, the appellate court is “free to exercise [] independent judgment.” *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006); see also *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989) (similar language). An appellate court will “review de novo” a question of law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

Whether an administrative agency has provided sufficient notice in accordance with the requirements of procedural due-process is a legal issue, which the court reviews de novo. *In re License of West Side Pawn*, 587 N.W.2d 521, 522 (Minn. App.1998), review denied (Minn. Mar. 30, 1999).

In unemployment benefit cases, the appellate court is to review the ULJ's factual findings “in the light most favorable to the decision” and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006) (citing *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Markel v. City of Circle Pines*, 479 N.W.2d 382, 383–84 (Minn. 1992)). The ULJ’s decision must be supported by reliable, probative, and substantial evidence. Minn. R., Part 3310.2922. Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

ARGUMENT

I. The ULJ's decision denying relator a hearing on the overpayment because of untimeliness is inconsistent with due process of law.

The ULJ's decision after the hearing and after reconsideration concluded that the notice was proper because it was sent to relator's last known address, and that relator's effort to obtain a hearing on the merits of the overpayment was untimely because the appeal was requested outside the 30-day period from mailing of the notice in 2006. This decision is not consistent with due process of law and must be reversed.

Due process at a minimum requires that a deprivation of property by adjudication "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). Notice consistent with due process in a proceeding that is to be accorded finality "is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.*, 339 U.S. at 314 (citations omitted).

Relator has suffered a deprivation of property because respondent DEED has determined he owes \$19,463. DEED initiated this overpayment claim in 2006 – demanding that relator pay \$11,570 – by mailing a letter to the address it had for relator from 2005. According to Minn. Stat. § 268.18, subd. 2(b) (2005)³ and the ULJ's

³ Minn. Stat. § 268.18, subd. 2(b) (2005), provides: "Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of

decision, the determination became final when no appeal was filed within 30 days.

In this case, the use of mailed notice was not reasonably calculated, under all the circumstances, to apprise relator of the commencement of the overpayment proceeding and allow him to present his objections, and therefore it is not consistent with due process of law. At the time the overpayment notice was issued, relator had not been requesting any benefits from DEED for over seven months. No statutory provision required relator to update his address with DEED after his claim ended. No statutory provision creates any duty of relator to maintain a current mailing address with DEED months or years after his claim ended. In the absence of making any new claim for unemployment benefits, relator would have no reason to contact DEED and provide or update his address.

The record of this case contains no evidence of any document putting relator on notice that he was at risk for future determinations from DEED being sent by mail to a former address. In this regard, the facts here are similar to *Schulte v. Transportation Unlimited, Inc.*, 354 N.W.2d 830 (Minn. 1984), where the notices that were issued to the claimant did not inform him of the potential consequences of the employer's appeal filed after he had returned to work. In *Schulte*, the notice was defective under due process: "Accordingly, to be constitutionally sufficient, the notice must communicate the interest

overpayment by fraud to the applicant's last known address, the determination shall become final." The current statutory language, § 268.18, subd. 2(b) (2011), is not different in effect: "Unless the applicant files an appeal within 20 calendar days after the sending of the determination of overpayment by fraud to the applicant by mail or electronic transmission, the determination is final."

at stake, that a reversal means the recipient has been overpaid and repayment is required.” *Id.*, 354 N.W.2d at 834. Because the notice was deficient, the Supreme Court reversed the finding that his appeal was untimely and remanded for a de novo hearing on the merits. *Id.*, 354 N.W.2d at 835. Here, the record contains no constitutionally sufficient notice to relator of the consequences of his not maintaining a current mailing address with DEED following the end of his benefit claim. The lack of sufficient notice requires that the finality of the determination be set aside and that relator be allowed a hearing on the merits.

In contrast to applicants for benefits, employers paying wages in Minnesota have an ongoing relationship with DEED and are statutorily required to provide actual and accurate address information. Minn. Stat. § 268.042, subd. 1(a) (2011). When DEED mailed notice approving an applicant’s claim for benefits to the employer’s prior address, after the employer had updated DEED’s webpage two years earlier with its new address, the Court of Appeals affirmed the ULJ’s finding that the employer appeal was not untimely because the Department’s mailing error meant that the appeal period had never begun. *Stassen v. Lone Mountain Truck Leasing, L.L.C.*, 814 N.W.2d 25 (Minn. App. 2012). “But the ULJ was persuaded that Lone Mountain acted reasonably in believing that, by changing its address on one page, DEED would apply the change for all purposes. We are similarly satisfied on this record that the error was not because of Lone Mountain’s lack of reasonable effort or diligence.” *Id.*, 814 N.W.2d at 30.

In this relator's case, the ULJ ruled that the law "places no burden on the department to search for an applicant's current address when mailing a determination." (App-30). On this record, the Department's use of the address in its files from the 2005 claim as relator's last known address is clearly not the result of any effort to ascertain relator's current address. See, *e.g.*, Minn. Stat. 268.19, subd. 1(a)(10), authorizing sharing by DEED of information with local, state, and federal law enforcement agencies in order "to ascertain the last known address" of an individual for a criminal investigation. DEED apparently did not contact local Ramsey County law enforcement in April, 2006, to ascertain relator's address, where he would have been found in jail. The claim of intentional fraud in this case is not obviously outside the ambit of a criminal investigation. The record shows that DEED did locate a different address – that of relator's mother – and sent a collection notice to that address in 2010. The statutory provision and the actions of DEED show that DEED had both the authority and the ability to ascertain whether mailing to the 2005 address was reasonably likely to apprise relator of the claim and allow him to ask for a hearing.

The ULJ found that relator did not receive the notice sent in April, 2006, and that he did not get actual notice of the overpayment claim until the letter sent to his mother's address in September, 2010. The record clearly shows no lack of reasonable effort or diligence by relator in seeking to get a hearing on the merits.

Relator does not challenge the use of mail notice *per se*, which in many

circumstances is a reasonable and reliable means of informing individuals of a legal matter.⁴ Under all the circumstances in this specific case, use of mailed notice falls short of due process and requires that the procedural default be excused and the matter reopened.

In every legal proceeding governed by the Minnesota Rules of Civil Procedure, Rule 60.02 allows the court to reopen a case that is otherwise final in circumstances when it is just. In *Finden v. Klaas*, 266 Minn. 268, 128 N.W.2d 748 (1964), the court used Rule 60.02 to relieve the defendant from default judgment after the lawsuit was started by personal service. “However, it is a cardinal rule that, in keeping with the spirit of Rule 60.02, in furtherance of justice and pursuant to a liberal policy conducive to the trial of causes on their merits, the court should relieve a defendant from the consequences of his attorney’s neglect in those cases where . . .” the four-part test is satisfied. *Id.*, 268 Minn. at 271, 128 N.W.2d at 750. See also, *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 174 (Minn. App. 2009) (“...a weak showing on one factor may be offset by a strong showing on the other factors”).

If the *Finden v. Klaas* factors were considered in this case, relator would qualify for relief. Relator has proffered his affidavit and documents showing he is possessed of a

⁴ While first-class mailed notice to a defendant is allowed when the court administrator sends summons to start a conciliation court case, claims above \$2,500 require personal service of the summons on the defendant. M.Gen.R.Prac., Rule 508(d)(1). Any money claim above the \$7,500 jurisdictional limit of conciliation court must be brought in district court upon personal service.

reasonable defense on the merits. Relator has shown a reasonable excuse for his failure to respond to the determination sent to him in April, 2006. After receiving notice of the claim of overpayment, relator has demonstrated due diligence and reasonable effort in responding to the DEED claim and requesting a hearing on the merits. DEED has not claimed or demonstrated prejudice, were the claim to be now heard on the merits.

Because DEED's underlying fraud claim appears based solely on an anonymous tip, it is not clear that the anonymous tipster is any less available now than in 2006 when the claim was initiated, indicating no apparent prejudice were the case to be reopened. The principles of Rule 60.02 would mandate granting relief to relator in any court forum.⁵

Due process does not permit imposition of this \$19,463 debt on relator – commenced by a letter to his former address – without allowing an opportunity to reopen the determination for a hearing on the merits. Relator requests that the ULJ's decision be reversed and that this matter be remanded for de novo hearing.

⁵ The rules for contested case proceedings conducted by the Office of Administrative Hearings authorize reopening under standards substantially similar to Rule 60.02. See, Minn.Rules, Part 1400.8300. And see, *Matter of Minnesota Public Utilities Commission Initiation of Summary Investigation*, 417 N.W.2d 274, 282 (Minn. App. 1987), review denied (“...since administrative agencies have been accorded a Rule 60 type of authority to reopen and consider decisions based on allegations of extrinsic or intrinsic fraud, we believe the Commission must also possess the implied authority to reopen judgments at anytime based on the ‘fraud on the court’ doctrine recognized by Rule 60.02”).

II. DEED has inherent authority to reopen and correct erroneous decisions within the time allowed for appeal. When there is a failure of notice, the appeal time has not begun to run.

A fifty-year line of cases establishes that the Department has inherent authority to correct erroneous decisions during the pendency of the time for a further appeal. *Anchor Cas. Co. v. Bongards Coop. Creamery Ass'n*, 253 Minn. 101, 104, 91 N.W.2d 122, 124 (1958); *Pfalzgraff v. Com'r of Econ. Sec.*, 350 N.W.2d 458, 460 (Minn. App. 1984); *Nieszner v. Minn. Dept. of Jobs & Training*, 499 N.W.2d 832, 838 (Minn. App. 1993); *Rowe v. Dept. of Empl. & Econ. Devel.*, 704 N.W.2d 191, 195 (Minn. App. 2005).

In this case, DEED erred by not using this authority to reopen the 2006 determination and allow relator a hearing on the merits of the claim. The record shows that relator had no actual notice of the claim for more than four years. The proffer by relator showed that he had vacated his dwelling and begun residing at Ramsey County jail two months before the determination was sent to the 2005 address. DEED had sufficient evidence to determine that the 2006 notice was not reasonably calculated to reach relator and apprise him of the overpayment claim. It is within the competence of the agency to recognize that due process would be violated without allowing a reopening of this matter. Because the notice of the proceedings was not adequate under the constitution, the inherent authority cases allow DEED to reissue the notice or otherwise to reopen the matter for adjudication. This error must be corrected.

CONCLUSION

The imposition of the \$19,463 overpayment penalty on relator by mailed notice to an address where he no longer resided is not consistent with the Minnesota Constitution's guarantee of due process of law. Respondent DEED erred in not reopening this matter under its inherent authority to correct erroneous decisions. The ULJ's decision must be reversed and this matter remanded for a hearing on the merits of the overpayment claim.

Respectfully submitted,

LAW OFFICES OF SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.

Dated: 22 Oct 2012



By: Charles H. Thomas, ID # 109058
Laura Melnick, ID # 168695
55 East Fifth Street, Suite 400
St. Paul MN 55101
651.222.5863

Attorneys for Relator