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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-607**

Judith A. Davidson,
Relator,

vs.

Department of Employment
and Economic Development,
Respondent.

**Filed April 22, 2008
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 18051 06

Judith A. Davidson, 670 Koehnen Drive, Chaska, Minnesota 55318-2517 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
Minnesota 55101-1351 (for respondent)

Considered and decided by Hudson, Presiding Judge; Worke, 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UNPUBLISHED OPINION

HUDSON, Judge

On certiorari appeal, relator argues that the unemployment-law judge erred in holding that she was not eligible for unemployment benefits and contends that she should be eligible because she relied to her detriment on advice from an employee of respondent. Because relator's first benefit year expired and she did not have any covered earnings to establish a second benefit account, we affirm.

FACTS

Relator Judith A. Davidson worked for Computer Network and its successor organization, McData Corporation (employer), for many years. Relator was separated from her employment on October 1, 2005, and she received a lump-sum severance payment that applied to the period of time from her separation from employment through May 21, 2006.

Relator established an unemployment benefits account with respondent Minnesota Department of Employment and Economic Development (DEED) on October 2, 2005. The next month, relator received a determination of ineligibility for unemployment benefits because of her receipt of severance pay; she was not eligible to receive unemployment benefits until May 2006. Relator testified that the DEED adjudicator told her that she could reactivate her unemployment account in May 2006 after her severance pay period ended. Relator reactivated her account accordingly, served a waiting week, and received unemployment benefits from June 4, 2006, through September 30, 2006,

when her benefits ended because her benefit year, which had an effective date of October 2, 2005, expired.

Relator, who had thought that her benefit year began when she reactivated her account in May 2006, rather than when she established it in October 2005, sought an explanation from DEED and spoke with a number of DEED employees. She learned that to have obtained an effective date in May 2006, she should have withdrawn her account and then established a new account in May 2006. Relator then sought to establish a second benefit account. DEED issued an amended determination indicating that relator was not entitled to benefits for the second account.

Relator appealed the determination, and a hearing was held before an unemployment-law judge (ULJ). At the hearing, relator argued that the effective date of her benefit account should have been in May 2006, after her severance pay ended, because she had relied on the advice from the DEED adjudicator, to her detriment, to reactivate her benefit account rather than withdrawing it and then establishing the account again. The ULJ pointed out at the hearing that the handbook relator received explained relator's available options, including the option to withdraw her account and establish a new one after her severance pay period ended. And relator admitted that while she read the handbook, she instead followed the directions she received from the DEED adjudicator.

After the hearing, the ULJ issued written findings of fact and a decision ruling that relator was not eligible for benefits. The ULJ found that

to establish a second benefit account following the expiration of a prior benefit account, an applicant must have sufficient wage credits to establish a benefit account and must have performed services in covered employment after the effective date of the prior account. In this case, [relator] did not have any covered earnings after her separation from employment with [employer] on October 1, 2005. She cannot establish a second benefit account following the expiration of the account established October 2, 2005.

Relator requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

This court may affirm the decision of the ULJ 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: (1) violate constitutional provisions; (2) exceed the statutory authority or jurisdiction of the department; (3) are made upon unlawful procedure; (4) are affected by other error of law; (5) are “unsupported by substantial evidence in view of the entire record as submitted”; or (6) are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2006); see *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (citing this standard of review). We review factual findings by the ULJ “in the light most favorable to the decision” and give deference to the ULJ’s credibility determinations. *Skarhus v. Davanni’s, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a statute precludes an application for benefits is a question of law, which we review de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

Relator does not dispute the ULJ’s factual determinations but instead argues that she should be eligible for a full 52 weeks of benefits, based on an effective date in May

2006. She contends that her benefits should not be denied because she relied on the DEED adjudicator's advice to reactivate her benefit account rather than withdrawing it and opening a new benefit account, to her detriment. We are not unsympathetic to relator's plight. But "[t]here shall be no equitable or common law denial or allowance of unemployment benefits." Minn. Stat. § 268.069, subd. 3 (2006). As a result, relator must show a statutory basis to support her argument.

After a person applies for unemployment benefits, the commissioner will make a determination of benefit account, calculating the amount of unemployment benefits available, if any. Minn. Stat. § 268.07, subd. 1(b) (2006). The applicant may be eligible to receive benefits for a "benefit year," a 52-week period beginning on the effective date of the benefit account. Minn. Stat. §§ 268.035, subd. 6 (defining benefit year); .085 (addressing eligibility). Before receiving benefits, the applicant must serve a waiting period of one week. Minn. Stat. § 268.085, subd. 1(5) (2006). Generally, an "applicant may establish only one benefit account each 52 calendar weeks." Minn. Stat. § 268.07, subd. 3b(c) (2006).

Once an applicant establishes a benefit account, it may be withdrawn only if a new application is filed and a new benefit account is established at the time of the withdrawal, and if the applicant has not yet served a waiting week. Minn. Stat. § 268.07, subd. 3b(b) (2006). There are no statutory exceptions to this provision. *Cf.* Minn. Stat. § 268.07, subd. 3b(a) (2006) (providing that if individual attempted to file an application but was denied by the department, that account shall be effective when the person first attempted to file the application). Therefore, because relator had already served a waiting week on

her account established on October 2, 2005, she could no longer withdraw it, and the ULJ correctly ruled that the account expired.

Next, we review the ULJ's decision that relator could not establish a second benefit account. An applicant for benefits may establish a second benefit account only when certain circumstances exist:

To establish a second benefit account following the expiration of a benefit year on a prior benefit account, an applicant must have sufficient wage credits to establish a benefit account under subdivision 2 and must have performed services in covered employment after the effective date of the prior benefit account. The wages paid for that employment must equal not less than eight times the weekly unemployment benefit amount of the prior benefit account. The purpose of this subdivision is to prevent an applicant from establishing more than one benefit account as a result of one loss of employment.

Minn. Stat. § 268.07, subd. 3 (2006).

The ULJ found that relator had not worked in covered employment since October 2005, and these findings are supported by the evidence in the record. Because relator did not work in covered employment after the effective date of her first benefit account, relator was not eligible to establish a second benefit account under section 268.07, subdivision 3. Accordingly, there is no statutory basis available to relator to establish a second benefit account or to otherwise continue to receive benefits.

Relator's reliance on the advice from the DEED adjudicator, while understandable, was obviously and unfortunately misplaced. We have no choice but to conclude that the ULJ did not err in determining that relator's account established October 2, 2005, had expired and that she could not establish a second benefit account.

Affirmed.