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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1807**

David Melin,  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed June 22, 2010  
Affirmed  
Johnson, Judge**

Department of Employment and Economic Development  
File No. 23139498-3

David Melin, Burnsville, Minnesota (pro se relator)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Johnson, Judge.

**UNPUBLISHED OPINION**

**JOHNSON**, Judge

David Melin was deemed ineligible for extended unemployment benefits because  
he did not maintain an active benefits account by continually filing biweekly requests for  
benefits. He argues that the unemployment law judge (ULJ) erred by determining that he

did not have good cause for failing to request benefits. We conclude that the ULJ did not err by determining that Melin did not have good cause for failing to request benefits and, therefore, affirm.

## **FACTS**

Melin was employed by Q Carriers as a transportation broker from August 2006 to January 2007, when his employment was terminated. Melin established an unemployment-benefits account with the Department of Employment and Economic Development (DEED), effective January 21, 2007. In August 2007, Melin received the maximum amount of benefits and thereby exhausted his benefits account.

Melin next worked as a delivery person for Edina Couriers from September 2007 to November 2007. Melin did not seek unemployment benefits following his departure from Edina Couriers because he had exhausted his benefits account. He did not regain employment until December 2008.

In June or July 2008, Melin received notice from DEED of a federal appropriation for a 13-week extension of unemployment benefits. On June 29, 2008, Melin reactivated his benefits account, and he filed requests for extended benefits in subsequent weeks through September 28, 2008. On October 13, 2008, Melin received notice of DEED's determination that he is ineligible for the federal extension of unemployment benefits for his termination from Q Carriers because he subsequently was terminated from employment at Edina Couriers. After receiving notice of this determination, Melin did not file any additional requests for continued benefits.

In November 2008, Melin received notice that Edina Couriers had requested reconsideration of DEED's ruling that Melin was an employee, not an independent contractor. According to the ULJ, the notice informed him "that he was to continue to request benefits during the appeal process, and if the appeal decision is in his favor, he would be paid for the weeks that he properly requested benefits." Nonetheless, after receiving notice of Edina Couriers' request for reconsideration, Melin did not file any additional requests for continued benefits.

On June 23, 2009, Melin received notice that DEED had reversed its earlier determination by ruling that Melin was an independent contractor for Edina Couriers, not an employee. As a consequence, Melin's departure from Edina Couriers does not affect his eligibility for unemployment benefits arising from his termination by Q Carriers. The following day, Melin contacted DEED to request unemployment benefits for the period of October 12, 2008, to June 27, 2009, based on his termination by Q Carriers. In response to Melin's June 27, 2009, request, DEED determined that Melin is ineligible for benefits for the period in question because he did not have an active benefits account due to the fact that he had not filed continued requests for benefits since September 28, 2008. Melin filed an administrative appeal from that determination. On August 7, 2009, a ULJ affirmed the earlier determination of ineligibility, concluding that Melin did not have an active benefits account because he did not file timely requests for continued benefits between October 12, 2008, and June 27, 2009, and did not have good cause for his failure to do so. After Melin sought reconsideration, the ULJ affirmed her previous decision. Melin now appeals to this court by way of a writ of certiorari.

## DECISION

Melin argues that the ULJ erred by finding that he did not have good cause for failing to file requests for continued benefits between October 12, 2008, and June 27, 2009. We review a ULJ's benefits decision to determine whether the findings, inferences, conclusions of law, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee is eligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Carlson v. Department of Employment & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

To be entitled to unemployment benefits, an applicant must meet "all of the ongoing eligibility requirements under section 268.085." Minn. Stat. § 268.069, subd. 1(3) (Supp. 2009). Under section 268.085, an applicant may be eligible to receive unemployment benefits for a particular week if "the applicant has filed a continued request for unemployment benefits for that week under section 268.0865." Minn. Stat. § 268.085, subd. 1(1) (Supp. 2009). Under section 268.0865, if the applicant does not file a continued request "within two calendar weeks following the week in which the date designated occurred, . . . the applicant is ineligible for unemployment benefits for the period covered by the continued request, unless the applicant shows good cause for failing to file the continued request . . . within the time period required." Minn. Stat.

§ 268.0865, subd. 3(c) (Supp. 2009) (applying to continued requests by electronic transmission); *see also* Minn. Stat. § 268.0865, subd. 4(b) (Supp. 2009) (applying to continued requests by mail). An applicant can show “good cause” if he or she has “a compelling substantial reason that would have prevented a reasonable person acting with due diligence from filing a continued request for unemployment benefits within the time periods required.” Minn. Stat. § 268.0865, subd. 5(a) (Supp. 2009). The statutory definition of “good cause”

does not include forgetfulness, loss of the continued request form if filing by mail, having returned to work, having an appeal pending, or inability to file a continued request for unemployment benefits by the method designated if the applicant was aware of the inability and did not make diligent effort to have the method of filing a continued request changed by the commissioner.

Minn. Stat. § 268.0865, subd. 5(b) (Supp. 2009).

In her written ruling, the ULJ determined that Melin did not have good cause for the following reasons:

Melin argues that his account should be backdated to October 12, 2008 when he quit applying for benefits. His argument is that if he had received the determination finding him an independent contractor, then he would have continued to apply for benefits and he would have been eligible for the federal extensions. However, Melin was repeatedly informed that he was to continue requesting benefits throughout the appeal process, but he became frustrated and he chose not to do so, because he did not think he would receive benefits. Melin’s frustration with the process and the fact that it took the Department longer than usual to issue its decision on request for reconsideration is not good cause for failing to request benefits.

There is substantial evidence in the record to support the ULJ's findings. Melin testified that he stopped filing requests for continued benefits in October 2008 because "I had accepted the fact that I was an employee and I would not be eligible for any benefits from Edina Couriers because I had been discharged from the job. So I just . . . went forward with my life." But the ULJ stated that DEED specifically informed Melin in November 2008 "that he was to continue to request benefits during the appeal process." Melin does not dispute that he received this notice and does not have any additional explanation for why he ignored DEED's instructions, which stated that he should continue to request benefits while Edina Courier's request for reconsideration was pending. Thus, there is substantial evidence in the record supporting the ULJ's finding that Melin does not have good cause for failing to request continued benefits.

Melin contends that he can satisfy the good-cause standard because DEED did not notify him that he was eligible for the federally subsidized extension of benefits, as DEED was required to do by federal regulations. Those regulations state:

Whenever there has been a determination that an Extended Benefit Period will begin in a State, the State agency shall provide prompt written notice of potential entitlement to Extended Benefits to each individual . . . who exhausts all rights under the State law to regular compensation during an Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

20 C.F.R. § 615.13(c)(1)-(2) (2009). Melin's argument concerning this federal regulation is not well developed. For example, he does not expressly state when DEED should have provided notice to him or how notice would have led to his eligibility for extended benefits. Regardless, the federal regulation on which he relies does not provide any

remedy for a state's failure to give notice to individuals who are entitled to notice. Likewise, Melin has not cited any Minnesota statute or case for the proposition that DEED's failure to give notice required by a federal regulation excuses an applicant's failure to request continued benefits. We are not aware of any such authority. An applicant for unemployment benefits must satisfy the requirements of the unemployment-benefits statutes. *Irvine v. St. John's Lutheran Church*, 779 N.W.2d 101, 104-05 (Minn. App. 2010) (affirming denial of benefits because relator had not established benefits account). Thus, whether Melin is eligible for extended unemployment benefits depends solely on whether he can satisfy the requirements of the relevant statutes.

An applicant is eligible for extended unemployment benefits only if he or she has satisfied the requirements of Minn. Stat. § 268.115, subd. 3 (2006). One of the requirements of section 268.115, subdivision 3, is that the applicant "has satisfied the same requirements as those for regular unemployment benefits under section 268.069." *Id.*, subd. 3(2). As stated above, section 268.069 requires an applicant to meet "all of the ongoing eligibility requirements under section 268.085," Minn. Stat. § 268.069, subd. 1(3), and section 268.085, in turn, requires an applicant to have "filed a continued request for unemployment benefits for that week under section 268.0865," Minn. Stat. § 268.085, subd. 1(1). Melin did not continually request benefits as required by section 268.0865, and the ULJ found that he did not establish good cause for failing to do so. *See* Minn. Stat. § 268.0865, subd. 3(c).

In sum, the record supports the ULJ's determination that Melin is ineligible for extended unemployment benefits from October 12, 2008, through June 27, 2009, on the

grounds that he did not have an active benefits account because he failed to file requests for continued benefits during that period and that he did not have good cause for failing to do so.

**Affirmed.**