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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2160**

Alfonzo Peek,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 3, 2010
Reversed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 23056801-4

Alfonzo Peek, St. Cloud, Minnesota (pro se relator)

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

Considered and decided by Bjorkman, Presiding Judge; Shumaker, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this certiorari appeal, relator challenges the unemployment-law judge's (ULJ) determination that relator fraudulently obtained unemployment benefits while he was incarcerated. Because (1) the ULJ erred in applying the law and (2) there is not sufficient

evidence to support the ULJ's determination that relator was overpaid because he obtained benefits through fraud, we reverse.

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” are affected by an error of law or unsupported by substantial record evidence. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2008).

We review a ULJ's findings of fact in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). But we review issues of law, including questions of statutory interpretation, de novo. *Abdi v. Dep't of Employment & Econ. Dev.*, 749 N.W.2d 812, 814-15 (Minn. App. 2008). When statutory language is clear on its face, construction is not permitted, and we apply the plain language of the statute. *Carlson v. Dep't of Employment & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

The ULJ's overpayment determination centered on the application of two unemployment statutes: one defining fraud and the other creating a presumption about the use of a personal identification number (PIN) to obtain benefits.

Under the first statute, an applicant for unemployment benefits who receives benefits “by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the

correctness of the statement or representation, has committed fraud.” Minn. Stat. § 268.18, subd. 2(a) (Supp. 2009).

The second statute provides that when an applicant establishes an unemployment-benefit account and respondent Minnesota Department of Employment and Economic Development (DEED) assigns a PIN, the applicant may use the PIN to request benefits.

When the PIN is used

the applicant is presumed to have been the individual *using* that PIN and presumed to have *received* any unemployment benefit payment issued. This presumption may be rebutted by a preponderance of the evidence showing that the applicant assigned the PIN was not the individual who *used* that PIN in the transaction.

Minn. Stat. § 268.084(b) (Supp. 2009) (emphasis added).

Applicants are not eligible to receive unemployment benefits while they are incarcerated. Minn. Stat. § 268.085, subd. 2(4) (Supp. 2009). It is undisputed that relator was incarcerated from February 23 through May 15, 2009. During these 12 weeks, someone used his PIN to report to DEED that he was available for work. DEED deposited benefits into relator’s debit-card account for each week. On July 14, DEED’s fraud tip-line received a report that relator was in jail during this 12-week period. DEED confirmed the report, and a DEED adjudicator determined that relator was ineligible for benefits and had been overpaid benefits due to fraud. Relator appealed, and the ULJ conducted a de novo hearing.

Relator testified that his former girlfriend, who had access to his personal items following his arrest, found his PIN and then requested, and collected, the benefits. The

ULJ concluded that relator “did prove that he himself did not request benefits because he was unable to do so while in jail.” But the ULJ determined that this was not sufficient to rebut the statutory presumption because he may have given his PIN to a family member. Based on the statutory presumption that relator received the benefits while he was incarcerated, the ULJ concluded that relator received an overpayment due to fraud.

The focus of our analysis is on the ULJ’s application of the statutory presumption. By its clear terms, Minn. Stat. § 268.084(b) establishes a single presumption that when a PIN is used, the applicant to whom the PIN was issued both used the PIN and received the benefits. The last sentence of the statute uses the singular when describing how an applicant can avoid operation of the statute: “[t]his presumption may be rebutted” by evidence showing that the applicant “was not the individual who *used* the PIN in the transaction.” Minn. Stat. § 268.084(b) (emphasis added). The statute does not require the applicant to prove that he did not receive the benefits in order to rebut the presumption. So long as the applicant shows by a preponderance of the evidence that he did not use the PIN, the presumption is rebutted.

The ULJ expressly found that relator proved that he was not the person who used the PIN to request benefits during the period of his incarceration. This finding is not disputed and is sufficient to rebut the statutory presumption. The ULJ erred in concluding otherwise.

Absent application of the presumption that relator used the PIN and received the benefits, there is insufficient record evidence to sustain a finding that relator obtained benefits by fraud. The report to DEED’s tip hotline and the documents showing that

someone used the PIN to report that relator was eligible for work while he was in jail do not constitute evidence as to who used the PIN or received the requested benefits. DEED's reliance on *Odegard v. Dep't of Employment & Econ. Dev.*, No. A04-2168, 2005 WL 2129106, at *3 (Minn. App. Sept. 6, 2005), is misplaced. In *Odegard*, family members testified that relator gave them his PIN while he was in jail and that they had used it at his direction. No similar evidence was presented in this case. Although the ULJ questioned relator's credibility based on his assertion that his ex-wife stole his unemployment benefits while he was incarcerated back in 2004, this concern is not evidence as to who used relator's PIN to request and receive benefits in 2009. Absent substantial evidence that relator fraudulently obtained benefits, the ULJ's determination lacks the requisite factual support.

Reversed.