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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2357**

Fathi Chalbi,
Relator,

vs.

Department of Employment and
Economic Development,
Respondent.

**Filed February 5, 2008
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 12014 06

Fathi Chalbi, 849 – 20th Avenue Southeast, Minneapolis, Minnesota 55414-2507 (pro se relator)

Lee B. Nelson, 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; Kalitowski, Judge; and Muehlberg, 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UNPUBLISHED OPINION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

Relator challenges the unemployment law judge's decision that he is disqualified from receiving unemployment benefits because he knowingly failed to report earnings and engaged in fraud. Relator argues that he could not read the department's handbook because English is his second language, and therefore he did not knowingly fail to report earnings from a second job. Relator acknowledges that he was overpaid, but he asserts it was not because of any fraudulent activity on his part. And finally, relator contests the amount he owes. Because the unemployment law judge's decision is supported by substantial evidence and is not arbitrary or capricious, we affirm.

FACTS

Relator Fathi Chalbi worked for Taher Company until 2004, when he was discharged. In July 2004, relator established an unemployment-benefits account with the Minnesota Department of Employment and Economic Development (DEED) and began collecting unemployment benefits in October 2004. In September 2004, relator was hired to work at the Riverfront Radisson Hotel in St. Paul. Relator occasionally worked between 30 and 40 hours a week at the Radisson. From October 2004 through March 2005, relator used DEED's Voice Response Unit (VRU) to claim benefits approximately 20 times, each time answering "no" when asked "[d]id you work?" and "yes" when asked "[d]id you look for work and were you available for work?"

When DEED compared quarterly earnings reported for unemployment insurance tax and the unemployment insurance benefits paid, it discovered that relator had failed to

report his employment and earnings while he received unemployment benefits. A DEED investigator examined the matter and concluded that relator had been overpaid and that he should be subject to an administrative fraud penalty for failing to report his earnings. The DEED investigator issued a determination of overpayment in August 2006, which relator appealed.

During a September 2006 telephone hearing before an unemployment law judge (ULJ), relator admitted that he collected unemployment benefits while he was working at another job, but stated that it was “an honest mistake.” When the ULJ asked why he believed he could collect unemployment even though he was working at a job that paid him more than his previous job, relator replied, “[t]hat’s what it’s for. When you lose a job, you collect [un]employment. . . . [T]his is new to me and, like I said, I’m not going to deny this. I did and I thought I could do it, collect unemployment and work at the same time.” Relator was the only person who testified at the hearing.

The ULJ found that relator was paid \$4,948 in unemployment benefits to which he was not entitled, and that “[t]he overpayment was caused by [relator] knowingly misstating and failing to disclose material facts, and making false statements, regarding his new job.” Regarding the fact that English is not relator’s first language, the ULJ stated “[t]here was no evidence [relator] had difficulty understanding the telephone instructions. If there was any question in [relator’s] mind, he had a duty to ask someone at DEED, rather than continuing to provide false information.” The ULJ concluded that because the overpayment was a result of intentional behavior on the part of relator, he

was subject to a 25% penalty under Minn. Stat. § 268.18, subd. 2 (2006), and he had to repay a total of \$6,185.

Relator filed a request for reconsideration of the ULJ's decision, and in November 2006, the ULJ affirmed his September 2006 decision. This certiorari appeal follows.

D E C I S I O N

Relator admits that he was overpaid unemployment benefits and is willing to repay \$4,948, the amount he was overpaid. But relator challenges the ULJ's determination that he fraudulently obtained unemployment benefits and maintains that he did not knowingly fail to report his employment or earnings, and therefore he should not be required to pay the 25% fraud penalty.

On certiorari appeal, this court may affirm an unemployment law judge's decision, remand it for further proceedings, or reverse or modify it if it is unsupported by substantial evidence or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2006). This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

"Any applicant who receives unemployment 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) (2006). If the applicant engaged in fraud, the commissioner "shall assess a penalty equal to 25 percent of the amount fraudulently obtained." *Id.*

“Whether a claimant knowingly and willfully misrepresented or misstated material facts to obtain benefits involves the credibility of the claimant’s testimony.” *Burnevik v. Dep’t of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2006).

Here, the ULJ determined that relator “knowingly misstat[ed] and fail[ed] to disclose material facts, and ma[de] false statements, regarding his new job.” The record supports the ULJ’s determination.

While employed at the Radisson, relator repeatedly indicated, using DEED’s VRU system, that he was not working and that he was looking for work. The record also shows, and relator admits, that he never asked for clarification of the VRU questions or the unemployment benefit handbook, nor did he indicate to anyone that he did not understand the questions. Relator admitted during the hearing before the ULJ that he could understand what the ULJ was saying, but that he has “a little difficulty reading.”

It is clear from both of the ULJ’s decisions that he did not credit the testimony of relator. In his September 2006 decision, the ULJ stated that there was no evidence that relator had any difficulty understanding the VRU questions; in his November 2006 order of affirmation, the ULJ concluded that a reasonable person would have sought clarification of the VRU questions “unless they were trying to hide something.”

Although relator states that “I requested a[n] interpreter to help me but was not provided [with one],” the record does not support that assertion. Instead, the transcript shows that at the conclusion of the hearing, relator asked the ULJ whether he should get an interpreter to help him understand the instructions regarding appealing the ULJ’s written decision. The ULJ stated, “Mr. Chalbi, if you felt you were going to need an interpreter, I would’ve rather we had done it before this hearing today.” The ULJ went on to tell relator that he should get an interpreter to help him understand the documents if he has any concerns about being able to read them.

We conclude that the ULJ’s decision is supported by substantial evidence and is not arbitrary or capricious.

Affirmed.