

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A09-1256

A09-1259

John Cedar,
Relator,

vs.

New Mech Companies Inc.,
Respondent (A09-1259),

R J Mechanical Inc.,
Respondent (A09-1259),

Department of Employment and Economic Development,
Respondent.

**Filed April 13, 2010
Affirmed as modified
Halbrooks, Judge**

Department of Employment and Economic Development
File Nos. 22300756-3 (A09-1256) & 21446247-5 (A09-1259)

John Cedar, Fridley, Minnesota (pro se relator)

New Mech Companies, Inc., St. Paul, Minnesota (respondent)

R J Mechanical Inc., Mora, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that relator committed fraud when he failed to report wages he was receiving from a short-term job and continued to apply for and receive unemployment benefits. Substantial evidence in the record supports the ULJ's determination that relator committed fraud, but because the determination of the resultant overpayment contains a clerical error, we affirm as modified.

FACTS

Relator John T. Cedar is a pipefitter who has applied for unemployment benefits on an annual basis. In December 2007, relator set up a benefits account with respondent Minnesota Department of Employment and Economic Development (DEED) and began receiving weekly payments of \$351. In July 2008, relator was hired by respondent R J Mechanical Inc. and began receiving wages. Despite receiving wages, relator continued to submit his weekly requests for unemployment benefits, with no wages reported, and did so for five weeks.

DEED conducted a cross-check of employer records with benefit-account holders and discovered relator's fraud and the resultant overpayment. On March 31, 2009, DEED issued a "fraud determination" which concluded that relator had "six weeks of unreported wages. Four weeks of wages with a claimed unemployment benefit in addition to . . . wages." On the same date, DEED issued another determination of ineligibility, which in later documents is referred to as an "earnings determination." This

determination concluded that relator had been overpaid \$1,755 (five weeks at \$351).¹ Relator appealed both determinations because he “disagree[d] with the reported income” and requested an evidentiary hearing.

At the hearing, the ULJ asked relator if he had a reason for not reporting his wages. Relator claimed that he had gotten so accustomed to clicking “no” on DEED’s online survey when asked if he was receiving wages in a given week, he just continued to do so. Relator offered no defense or explanation at the hearing, other than stating that he was entitled to the unemployment benefits and that he was “just paid a little early.” This is the same argument he makes on appeal. Relator’s theory seems to relate to work he did for respondent New Mech Companies in late September and early October 2008. He was again laid off in October 2008, and when he attempted to collect his unemployment benefits in October, he was told his account was empty. He therefore concludes that he did not fraudulently receive the unemployment benefits in July and August 2008, he simply received them early because he would have eventually received them in October and November.

The ULJ issued two decisions dated April 27, 2009. One decision addresses the appeal of the fraud determination and the other addresses the appeal of the earnings determination. The decision resulting from relator’s appeal of the earnings determination states that relator was overpaid benefits because of fraud and that “[t]his determination results in an overpayment of unemployment benefits in the amount of \$1,755.” The ULJ

¹ Even though the initial fraud determination indicated four weeks of overpayment, and relator admitted to seven weeks for which he “got paid that [he] shouldn’t have,” all parties now agree, and the record supports, that there were five weeks of overpayment.

also assessed a penalty of \$702, which is 40% of the fraudulently obtained overpayment. The ULJ's decision resulting from relator's appeal of the fraud determination also states that relator was overpaid benefits totaling \$1,755 because of fraud, and assesses the same \$702 penalty, but then goes on to state in a separate paragraph that "[t]his determination results in an overpayment of unemployment benefits in the amount of \$13,995."

Relator requested reconsideration of both decisions, stating as his reason the phrase: "[f]raud on the part of the appeals court." On June 9, 2009, the ULJ affirmed her decision of the fraud-determination appeal, and on June 19, 2009, she affirmed her decision of the earnings-determination appeal. Relator filed pro se certiorari appeals of both decisions, which are consolidated before this court.

D E C I S I O N

This court may reverse or modify the decision of a ULJ if the substantial rights of a petitioner have been prejudiced because the findings, inferences, conclusions, or decision are unsupported by substantial evidence in the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(5) (2008).

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) (2008). If it is determined that an applicant obtained unemployment benefits by fraud, the applicant must promptly repay the unemployment benefits; in addition, the statute provides that the commissioner "shall assess a penalty equal to 40 percent of the amount fraudulently obtained." *Id.*

Relator argues that it was not fraud to receive unemployment benefits in July and August—even though he was ineligible at that time and lied on the online survey in order to receive the benefits—because he was ultimately going to receive the benefits in October and November. We disagree. Relator admitted to inaccurately filling out DEED’s online survey in order to receive unemployment benefits during weeks he was also receiving wages. Despite relator’s alleged knowledge that he would be unemployed in the future, he knowingly misrepresented the fact that he was receiving wages in July and August 2008. Because substantial evidence in the record supports the finding that relator committed fraud, we affirm the ULJ’s fraud determination.

There is also substantial evidence in the record to support the ULJ’s determination that relator received an overpayment of \$1,755. Based on Minn. Stat. § 268.18, subd. 2(a), the ULJ correctly assessed a \$702 penalty against relator. Unfortunately, the ULJ’s decision after relator appealed the fraud determination indicates two different overpayment amounts, one of which (\$13,995) DEED now concedes is inaccurate. We therefore affirm the earnings determination as modified to reflect the ULJ’s initial determination that relator’s fraud resulted in a \$1,755 overpayment and the ULJ’s assessment of a \$702 penalty.

Relator also argues that the inclusion of an overpayment amount of \$13,995 could not have been the result of an automatic computer generation as DEED asserts in its brief, but that it is “fraud by any definition of the word.” We disagree. There is no evidence that the ULJ knowingly issued a decision with an inaccurate overpayment amount. Relator’s frustration is understandable, especially considering he was receiving bills for

over \$14,000 as recently as November 2009 and that DEED has filed a claim against relator's state tax return. But with no evidence of fraud on DEED's part, his arguments have no merit.

Finally, relator raises an issue about future eligibility for unemployment benefits. Although the issue is not fully developed, the statute is clear that "[a]n applicant is ineligible for unemployment benefits for any week: . . . that the applicant . . . has an outstanding fraud overpayment balance." Minn. Stat. § 268.085, subd. 2(2) (2008). Accordingly, until relator has no outstanding overpayment balance because of his fraud, he is ineligible for unemployment benefits.

Affirmed as modified.