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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2081**

Stacy Larson,
Relator,

vs.

Lakes & Prairies Community Action Partnership, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 10, 2010
Affirmed in part, reversed in part, and remanded
Wright, Judge**

Department of Employment and Economic Development
File No. 23270483-2

Stacy Larson, West Fargo, North Dakota (pro se relator)

Lakes & Prairies Community Partnership Action, Inc., Moorhead, Minnesota
(respondent)

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

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this certiorari appeal, relator challenges the determination of the unemployment law judge (ULJ) that she was temporarily ineligible to receive unemployment benefits because of a postdischarge payment she received from her employer, resulting in an overpayment. We affirm in part, reverse in part, and remand.

FACTS

Relator Stacy Larson worked for Lakes & Prairies Community Action Partnership, Inc. (Lakes & Prairies) as an accounts-receivable and accounts-payable specialist, earning a final hourly wage of \$17.05, or weekly pay of \$682. Larson's employment terminated on June 5, 2008. Lakes & Prairies issued a final paycheck to Larson the following day.

Larson applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) initially determined that Larson was eligible to receive unemployment benefits and paid her weekly benefits of \$450. DEED subsequently determined that Larson was temporarily ineligible to receive unemployment benefits because of her final paycheck and issued a determination of ineligibility on May 22, 2009. This determination of ineligibility was amended on May 28, 2009. The May 28 determination found Larson ineligible to receive unemployment benefits from June 1 through June 14, 2008, because of the nature of compensation included in her final paycheck. Larson appealed the ineligibility determination.

After an evidentiary hearing, the ULJ concluded that Larson's final paycheck included \$3,138.41 that counted against her eligibility and made her ineligible to receive

unemployment benefits from June 6 through July 9, 2008. The ULJ also concluded that Larson received payments during this period of ineligibility, resulting in an overpayment of \$1,106. Following reconsideration of its decision at Larson's request, the ULJ affirmed. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2008).

We review a ULJ's factual findings in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will defer to the credibility determinations of the ULJ and sustain the ULJ's findings if they are substantially supported by the evidence. *Id.* But statutory construction presents a question of law, which we review de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

The general requirements for unemployment-benefits eligibility are set forth in Minn. Stat. § 268.085, subd. 1 (Supp. 2009). But an applicant who satisfies those requirements may nonetheless be ineligible to receive unemployment benefits or have the amount of unemployment benefits reduced if the applicant receives payment from an

employer after separation from employment. *See id.*, subds. 3, 5, 6 (Supp. 2009). The effect of the payment on the applicant's eligibility for, or amount of, unemployment benefits depends on the purpose of the payment.

An applicant's receipt of severance pay, bonus pay, or sick pay because of, upon, or after, separation from employment, renders the applicant temporarily ineligible to receive unemployment benefits. *Id.*, subd. 3(a)(2). Vacation pay paid under the same circumstances, however, does not affect the applicant's eligibility. *Id.*, subd. 3(a)(1). If the severance, bonus, or sick pay is paid in a lump sum, the applicant is ineligible to receive unemployment benefits for a period determined by dividing that sum by the amount of the applicant's last regular weekly pay from the employer. *Id.*, subd. 3(b). The whole number resulting from that division dictates the number of weeks after the payment for which the applicant is ineligible to receive unemployment benefits; the remaining portion of the payment is subtracted from the following week's unemployment-benefits payment. *Id.*, subd. 3(a), (b)(2), (c).

An applicant's postseparation receipt of back pay also counts against unemployment benefits. When an applicant receives back pay for a specific period of time within 24 months after the establishment of the benefit account, the amount of the back pay is subtracted from the applicant's unemployment benefits for the week the applicant received the payment. *Id.*, subd. 6(a) ("Back pay received by an applicant within 24 months of the establishment of the benefit account with respect to any week occurring during the benefit year must be deducted from unemployment benefits paid for that week.").

Finally, an applicant's postseparation receipt of earnings counts against the applicant's unemployment benefits, but in a more limited way. When an applicant has earnings equal to or in excess of the applicant's weekly unemployment-benefits amount, the applicant is ineligible to receive unemployment benefits for that week. *Id.*, subd. 5(a). But if the applicant earns less than the weekly benefits amount, only 55 percent of the earnings are counted against the applicant's unemployment benefits for that week. *Id.*, subd. 5(b).

With this statutory scheme in mind, we turn to the ULJ's allocation of Larson's final paycheck. Lakes & Prairies paid Larson \$3,232.19 in gross wages for the pay period of June 1 through June 15, 2008.¹ Included in that amount was \$1,000 as a bonus or "special pay"; \$556.17 was designated as payment for a retroactive pay increase; and \$1,676.02 was designated as payment for 98.30 hours at an hourly rate of \$17.05. Larson contends that "[t]he majority of the monies" from her final paycheck were improperly "applied as severance pay." DEED concedes that the ULJ made some errors and requests a remand. We address each portion of Larson's paycheck in turn.

It is undisputed that Larson received \$1,000 for her work on the Lakes & Prairies website during the 2008 tax season. The ULJ determined that the \$1,000 was "bonus pay" that counted against Larson's eligibility. *See id.*, subd. 3(a)(2), (b). The record

¹ We observe that, because neither Larson nor Lakes & Prairies provided Larson's paycheck as an exhibit for the evidentiary hearing, the paycheck itself is not part of the record for this appeal. *See* Minn. R. Civ. App. P. 110.01 (restricting record on appeal to papers filed with previous decision-maker, exhibits, and transcripts). Nonetheless, the record contains testimony as to the relevant aspects of the paycheck, and we rely on that testimony for our analysis.

supports this determination. The \$1,000 payment was described on Larson's final paycheck as "special pay." Larson testified that it was "a bonus pay" that she received for "extra services and work for [the Lakes & Prairies] tax site." She also explained that, although she had received it every year that she worked on the tax site, she did not know how Lakes & Prairies determined whether to pay a bonus or how much to pay. Although Larson now contends that the bonus "had nothing to do with [her] separation of employment," it need only be upon or after separation from employment to be counted against eligibility under section 268.085, subdivision 3(a)(2). Accordingly, the ULJ properly determined that Larson was temporarily ineligible to receive unemployment benefits because of the bonus.

Larson received a wage increase for her final paycheck. She also received \$556.17 in her final paycheck that she testified was for the purpose of making the wage increase retroactive to April 15. The ULJ accepted that explanation and found that Larson received "the gross amount of \$556.17 as back pay (retroactive pay) for a wage raise from \$16.55 per hour to \$17.05 per hour due her for the period April 15, 2008 through May 31, 2008." The ULJ, therefore, counted the \$556.17 against Larson's eligibility as "back pay." *See id.*, subd. 6(a).

Although Larson's testimony supports the ULJ's back-pay determination, when viewed in light of other, undisputed record evidence, the ULJ's determination that the entire \$556.17 is "back pay" is mathematically unsound. The record reflects that Larson worked full time, eight hours per day. Because there is no evidence indicating that Larson worked any more than her usual hours between April 15 and May 31, the record

does not support a finding that Larson worked more than approximately 264 hours that could be subject to retroactive pay. Thus, not more than \$132 of the \$556.17 that the ULJ found to be back pay reasonably can be attributed to payment for a retroactive wage increase. Although the degree of the error is not apparent from this record, the ULJ erred by determining that Larson received \$556.17 in back pay. Larson now attributes a portion of the \$556.17 to a payout for “earned time,” which Lakes & Prairies does not distinguish between vacation time and sick time. On remand, the ULJ must determine how much of the \$556.17 is back pay for time worked. And if a portion of the \$556.17 is attributable to an “earned time” payout, the ULJ also must determine how much is payment for vacation time or sick time. *See id.*, subd. 3(a) (counting postseparation payment for sick time, but not vacation time, against eligibility).

Lakes & Prairies paid Larson \$1,676.02 as wages for 98.3 hours of work. Larson does not challenge the ULJ’s determination that she actually worked 5.5 of these hours, making 55 percent of the \$93.78 she received in wages for that time deductible from her unemployment benefits. *See id.*, subd. 5(b). Only the remaining \$1,582.24 is at issue. The ULJ determined that the \$1,582.24 was equivalent to 92.8 hours and was “an additional gross amount” paid “because of her separation from employment.” The ULJ, therefore, concluded that the \$1,582.24 should be deducted from Larson’s unemployment benefits under Minn. Stat. § 268.085, subd. 3.

The record supports the ULJ’s determination that Larson received “an additional gross amount of \$1,582.24 . . . because of her separation from employment.” But Minn. Stat. § 268.085, subd. 3, requires not only that the payment be “because of, upon, or after

separation from employment,” but also that the payment be “in the form of . . . severance pay, bonus pay, sick pay, [or] other payments, except earnings under subdivision 5, and back pay under subdivision 6,” and be “considered wages at the time of payment under [Minn. Stat. § 268.035, subd. 29 (2008)]” to count against eligibility for unemployment benefits. *Id.*, subd. 3(a)(2). Findings as to these forms of payment are critical to ensure that an applicant is not held ineligible to receive unemployment benefits because of payments outside the statutory deductions, such as vacation pay. *See id.*, subd. 3(a)(1).

Larson argues that a portion of the \$1,582.24 was paid for “earned time,” and DEED asserts that the ULJ’s decision is insufficient because it does not determine what portion of the \$1,582.24 was for earned time and what portion of any earned time was sick time that counted against Larson’s eligibility. The ULJ did not find which, if any, of the deductible categories of pay fits the \$1,582.24 payment. Without a clear finding identifying the payment as severance pay, bonus pay, sick pay, or another form of payment that should count against her eligibility, the ULJ’s determination that Larson received “an additional gross amount of \$1,582.24 . . . because of her separation from employment” is insufficient to address the statutory factors relevant to whether the payment counts against Larson’s eligibility. We, therefore, remand for the ULJ to determine the precise nature of that payment.²

² DEED also asserts, in its discussion of the \$1,582.24, that the ULJ erred in calculating Larson’s “waiting week.” *See* Minn. Stat. § 268.085, subd. 1(6) (Supp. 2009) (requiring unemployment-benefits applicant to “serve[] a nonpayable waiting period of one week”). Because Larson did not raise this issue, we do not address it substantively. We observe, however, that this issue also may warrant consideration on remand.

In sum, we affirm the ULJ's determination that Larson was temporarily ineligible to receive unemployment benefits because of the \$1,000 bonus. But we reverse the ULJ's ineligibility determination with respect to the remaining \$2,138.41 and remand for further proceedings not inconsistent with this opinion.

Affirmed in part, reversed in part, remanded.