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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-237**

Joseph Reubendale,
Relator,

vs.

Collaborative Solutions,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 31, 2010
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
Agency File No. 23646945-3

Joseph Reubendale, Stillwater, Minnesota (pro se relator)

Collaborative Solutions Inc., Stillwater, Minnesota (respondent)

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

Considered and decided by Toussaint, Chief Judge; Schellhas, 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UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he could not establish an unemployment-benefit account. Because relator does not meet the statutory requirements for establishing an account, we affirm.

FACTS

In 2002, relator Joseph Reubendale incorporated respondent Collaborative Solutions Inc. (CSI), a consulting business of which he is the 80% owner and the sole employee. But until 2007, relator left CSI dormant and did not register CSI as an employer with respondent Minnesota Department of Employment and Economic Development (DEED). *See* Minn. Stat. § 268.042, subd. 1(a) (2008) (requiring each employer to register with DEED upon or before the submission of its first wage-detail report).

Effective January 1, 2005, the legislature specified that “employment of a corporate officer, if the officer owns 25 percent or more of the employer corporation,” would be considered “[n]oncovered employment” for unemployment-insurance purposes. 2004 Minn. Laws ch. 183, § 10, at 259, 262 (currently codified at Minn. Stat. § 268.035, subd. 20(28) (2008)). But an employer could elect to treat such noncovered employees as covered employees by filing a request with the commissioner. *Id.*, § 14, at 264 (currently codified at Minn. Stat. § 268.042, subd. 3(a) (Supp. 2009)). DEED represents that it

notified all registered employers of this statutory change in 2005, and since that time has allowed employers to elect coverage via a simple form on DEED's website.

In 2007, relator began consulting through CSI and registered it as an employer for the first time with DEED. But CSI did not elect to have relator's employment considered covered under section 268.042, subdivision 3(a), until April 1, 2009. CSI reported that relator earned no wages April 1, 2009, through June 30, 2009.

In October 2009, relator applied for unemployment benefits. DEED denied relator's application because he could not establish an unemployment-benefit account due to insufficient wage credits. Relator appealed, and after a telephone hearing, the ULJ concluded that relator could not establish an unemployment-benefit account and was ineligible for benefits. The ULJ affirmed his decision on reconsideration. This certiorari appeal follows.

D E C I S I O N

Because the facts in this case are undisputed, the question of whether relator is entitled to unemployment benefits is a question of law that we review de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

Before an applicant can be deemed eligible for unemployment benefits, the applicant must establish a benefit account. Minn. Stat. § 268.069, subd. 1(1) (Supp. 2009). This requires that sufficient wage credits be established during the relevant base period. Minn. Stat. § 268.07, subd. 2(a) (Supp. 2009). Relator's base period was July 1, 2008 to June 30, 2009. *See* Minn. Stat. § 268.035, subd. 4(b) (Supp. 2009) (providing that if application for benefits is effective on or between October 1 and October 31, the

base period is the prior July 1 to June 30). Because relator's employment before CSI's April 2009 election was noncovered and because CSI reported that he earned no wages April 1 to June 30, 2009, relator did not earn sufficient wage credits during his base period under Minn. Stat. § 268.07, subd. 2(a), to establish an unemployment-benefit account and therefore was not eligible for benefits.

Relator argues that "DEED overlooked the obligation to notify" CSI of the requirement that it elect to have its officers' employment considered covered for unemployment benefits. DEED contends that it did notify employers of the statutory change in 2005, but at that time, relator had not yet registered CSI as an employer, and he did not do so until 2007. Relator provides no support for his apparent position that DEED had an obligation to notify him of the statutory change when he registered CSI as an employer in 2007. An employer's failure to make the required election will preclude those in its noncovered employment from establishing unemployment-benefit accounts. *See, e.g., Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 104 (Minn. App. 2010) (concluding that discharged employee of church that had not elected to have its noncovered employees considered as covered under Minn. Stat. § 268.042, subd. 3(a), was unable to establish benefit account, even though "church's employment manual indicated incorrectly that unemployment benefits might be available").

Because the responsibility to elect coverage was CSI's and the responsibility to meet the statutory requirements for establishing an unemployment-benefit account was relator's, we conclude that DEED did not err by determining that relator is ineligible for employment benefits.

Affirmed.