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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0145**

Ronald Lloyd,
Relator,

vs.

Dream Home Interior Designs, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed September 10, 2012
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File Nos. 28555228-3; 28555229-3; 28555350-3; 28555351-3

Ronald Lloyd, Phoenix, Arizona (pro se relator)

Dream Home Interior Designs, Inc., St. Cloud, Minnesota (respondent employer)

Lee B. Nelson, Megan Flynn, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Chief Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this unemployment-compensation dispute, relator Ronald Lloyd challenges the determination of an unemployment-law judge (ULJ) that he fraudulently obtained an

overpayment of benefits. Relator argues that the ULJ clearly erred in finding that (1) the payments relator received from his company while collecting unemployment benefits were wages and not loans and (2) that as a result of his nondisclosure of his receipt of those payments, relator fraudulently obtained unemployment benefits. We affirm.

FACTS

Since 2001, relator has been the owner, president, and sole employee of Dream Home Interior Designs Inc., a subchapter “S” corporation. Relator established an unemployment benefits account in October 2010, and collected benefits until February 2011, attesting on the weekly benefits-request form that he did not work during this period of time.

In July 2011, Dream Home (through relator) submitted to the Department of Employment and Economic Development (DEED) a detailed wage information report covering the previous ten months. Dream Home reported paying to relator the following gross wages:

- \$2,000 on October 26, 2010
- \$2,000 on November 23, 2010
- \$2,000 on December 14, 2010
- \$1,000 on January 3, 2011
- \$2,000 on February 17, 2011

During each of these weeks, relator had collected unemployment benefits and attested that he was not working.

In September 2011, DEED issued determinations of ineligibility and fraud based on relator's receipt of the above payments while collecting unemployment benefits.

Relator appealed the determinations to a ULJ.

During the telephone hearing before the ULJ, relator testified that he works "on average" approximately 30 hours per week for Dream Home. He stated that the company has never paid him a salary. Rather, he testified that he was paid "based on profits," because he was the only employee.

Relator characterized the 2010–2011 payments from Dream Home as loans, not wages. He acknowledged that the payments to him were characterized as "wages" for tax purposes, and that payroll taxes were withheld from the payments. Relator maintained that his accountant had advised him to withhold payroll taxes in order to avoid paying a large sum later if the loans were not repaid. Relator further acknowledged that he was planning to wait until the end of the year to determine whether the payments were loans or income, based on his year-end tax situation and whether or not Dream Home needed the funds.

Relator did not sign any promissory notes with the company with respect to the payments in question. There was no contemporaneous documentation evidencing the payments' characterization as loans. Relator testified that as of the hearing date, he had paid back \$5,000 to Dream Home because the company needed the money.

Finally, relator testified that he did not report his hours spent working for Dream Home because he mistakenly believed he was only required to report work for which he was paid, and he did not consider the payments in question as earnings.

The ULJ determined that the payments from Dream Home during the period from October 2010 to February 2011 were wages, not loans. She found that relator had been working for Dream Home an average of 30 hours per week, during which time he received payments from Dream Home while collecting unemployment benefits. The ULJ expressly discredited relator's testimony that the payments were loans. She reasoned that: (1) the payments were not treated as loans at the time they were made; (2) relator regularly performed work for Dream Home during the time the payments were made; and (3) relator's repayment of the money to Dream Home was a reinvestment in the company, not a loan repayment.

The ULJ also discredited relator's testimony regarding why he failed to disclose that he had been working for Dream Home while collecting benefits. The ULJ found that relator continued to receive benefits "without a good faith belief about the accuracy of his statement[s]" attesting that he was not working. Accordingly, the ULJ ordered relator to repay the benefits to which he was not entitled, and imposed the statutory penalties for fraud.

This appeal by writ of certiorari followed.

DECISION

On appeal, relator challenges various factual findings and credibility determinations of the ULJ. In reviewing the decision of a ULJ, this court may reverse or remand if the relator's substantial rights were prejudiced because the decision was "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2010). Substantial evidence is defined as: "(1) such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env’tl Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). We must view the ULJ’s factual findings in the light most favorable to its decision. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

When a witness’s credibility has “a significant effect on the outcome of a decision,” the ULJ is required to “set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2010). However, this court must ultimately defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

I.

Relator first argues that the ULJ clearly erred in finding that the monthly payments he received from Dream Home were wages rather than loans.

The unemployment statute outlines the distinction between “wages” (which may reduce or eliminate benefits) and “loans” (which do not affect benefits).¹ *See generally* Minn. Stat. § 268.035, subd. 29 (Supp. 2011) (defining the term “wages” and enumerating the exceptions to that definition). Wages are broadly defined as “all compensation for services.” *Id.*, subd. 29(a). “[L]oan[s] for business purposes to an

¹ An applicant who works more than 32 hours per week is ineligible to receive benefits. Minn. Stat. § 268.085, subd. 2(6) (2010). When an applicant works less than 32 hours, the weekly benefit amount must be reduced by 55% of the earnings, so long as those earnings do not exceed the weekly benefit amount. *Id.*, subd. 5(b).

officer or shareholder [of a subchapter “S” corporation] evidenced by a promissory note signed . . . before the payment of the loan proceeds and recorded on the books and records of the corporation” are not “wages.” *Id.*, subd. 29(f)(1).

In this case, substantial evidence supports the ULJ’s determination that the payments to relator were earnings rather than loans. In its wage report submitted to DEED, Dream Home reported each of the payments as “gross wages.” Relator did not dispute that he worked for Dream Home “probably 30” hours per week during the time he received the payments. Although he characterizes this work as “a labor of love,” his motivation for performing the work is not relevant. *See* Minn. Stat. § 268.085, subds. 2(6), 5(b) (providing that a recipient’s benefits are reduced or eliminated based on services performed through any covered and non-covered employment, self-employment, and volunteer work).²

During the hearing, relator admitted that he was planning to wait until the year’s end to determine whether the payments were loans, depending on his tax situation and Dream Home’s financial need. He conceded that he might not pay back all of the funds. Although relator did pay back some of the “loans” before the hearing date, he testified that he did so because Dream Home needed an infusion of money. Thus, his testimony directly supports the ULJ’s finding that his repayment of the “loans” was actually a reinvestment in his company, based on its financial need.

² Similarly, relator’s argument that his work for Dream Home was secondary to his search for full-time employment is also not relevant. *See* Minn. Stat. § 268.085, subd. 5(b) (providing that part-time work reduces or eliminates recipient’s eligibility for unemployment benefits, depending on the amount of wages).

Additionally, relator did not present any documentation supporting his characterization of the payments as loans. He admitted that he did not sign a promissory note or loan agreement with Dream Home. He did not submit Dream Home's business records or any other evidence demonstrating that the payments were characterized on the corporate books as loans. The ULJ kept the record open following the hearing to allow relator to submit evidence or documentation that the payments were loans; relator failed to do so.³ The only documentation of the payments was Dream Home's wage report submitted to DEED, which characterized all of the payments as gross wages. Thus, the statute expressly prohibits treatment of the payments as loans. *See* Minn. Stat. § 268.035, subd. 29(f)(1) (detailing circumstances in which payments from subchapter "S" corporations will be treated as loans rather than wages).

Relator argues, as he did before the ULJ, that he listed the payments as wages on Dream Home's wage report because a DEED customer-service representative told him to report the payments as income even if they were loans. However, the ULJ discredited this testimony, based on all the reasons noted above. Because determining witness credibility is the exclusive province of the ULJ, this court will not disturb it on appeal. *Skarhus*, 721 N.W.2d at 345. Thus, substantial evidence in the record supports the ULJ's finding that the payments to relator were earnings and not loans.

³ In his brief, relator references a letter from his accountant, purportedly indicating that the payments were loans. There is no such letter in the record.

II.

Relator next argues that the ULJ clearly erred in finding that he obtained unemployment benefits through fraud. Specifically, the ULJ found that, by attesting on the weekly benefits-request form that he did not work from October to February 2011, relator continued to receive benefits “without a good faith belief about the accuracy of his statement[s].”

Minnesota law provides that “[a]ny 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) (2010). The statute imposes a mandatory penalty in the amount of 40% of the benefits fraudulently obtained. *Id.*

Whether an unemployment applicant knowingly failed to disclose material facts while requesting benefits is a question of fact, which often turns on the credibility of the applicant’s testimony. *Skarhus*, 721 N.W.2d at 344; *Burnevik v. Dep’t of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985). As noted above, credibility issues lie within the “exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

Relator does not dispute that he received the payments from Dream Home, that he failed to disclose them until filing the Dream Home wage report with DEED, and that he performed work for Dream Home which was required to have been disclosed. He argues that the ULJ’s finding of fraud was erroneous because he had no intent to defraud the

system. However, the statute does not require a conscious intent to defraud. *See* Minn. Stat. § 268.18, subd. 2(a). The statute expressly provides that a false representation made without a good-faith belief as to its correctness constitutes fraud. *Id.* Relator's own testimony supports the ULJ's finding that he made a false representation, without a good-faith belief as to its correctness, by regularly attesting that he was not working during the time he received unemployment benefits.

Relator also argues that he did not disclose the payments because he misunderstood the weekly benefits-request form. But the ULJ discredited relator's testimony on this subject, expressly finding his explanation implausible. The ULJ noted that the question on the form was clear and unambiguous. It reads, "Did you work or have a paid holiday during the reporting period listed above? This includes Full Time, Part Time, Temporary Work, *Self Employment or Volunteer Work.*" (Emphasis added.) Thus, the plain wording of the question directs recipients to disclose *any* work, even unpaid work and self-employment. Despite his knowledge that he was working 30 hours per week for Dream Home and receiving payments from the company, relator consistently answered "no" to this question.

Additionally, the ULJ noted that the unemployment handbook (provided to all applicants, and which relator admitted having received) clearly specifies that recipients must disclose any work, whether paid or not, including self-employment and volunteer work. Relator testified that he received the handbook and at least glanced through it. This supports an inference that he was aware of the requirement to disclose all forms of work, paid and unpaid.

Relator's argument on this issue essentially invites this court to independently assess credibility. The ULJ explained why she did not credit relator's testimony, as required by Minn. Stat. § 268.105, subd. 1(c). The record amply supports the ULJ's finding that by failing to disclose that he was working, and by failing to disclose the Dream Home payments, relator obtained benefits through fraud.

Affirmed.