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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1843**

Don Conaway,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed July 25, 2011
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 25782414-2

Don L. Conaway, Champlin, Minnesota (pro se relator)

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

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Don Conaway challenges the decision by an unemployment-law judge
(ULJ) confirming the effective date of his benefit account, arguing that his account
should be backdated because he was given inaccurate information by a Minnesota
Department of Employment and Economic Development (DEED) representative.

Because the effective date of a benefit account and the corresponding base period are prescribed by statute and because we are statutorily precluded from granting equitable relief, we affirm.

D E C I S I O N

When reviewing an unemployment-benefits decision by a ULJ, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law, unsupported by substantial evidence in the record, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2010). We view the ULJ's factual findings in the light most favorable to the decision and give deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether a statute precludes an applicant from receiving benefits is a question of law, which we review de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

Relator received a lump-sum severance payment equal to 18 months of his salary when his employment at Citi Financial Inc. was terminated in February 2009. At that time, relator contacted DEED to determine when he should apply for unemployment benefits in light of his severance package. Relator testified that the DEED representative told him “not to apply until [his] severance package expired” and to file three to four weeks before the severance package ended. Relator applied for unemployment benefits on July 12, 2010, approximately one month before the end of the 18-month period covered by his severance payment.

An applicant may be eligible to receive benefits for a “benefit year,” which is a 52-week period beginning on the effective date of the benefit account. Minn. Stat. § 268.035, subd. 6 (2010). But an applicant is not eligible to receive unemployment benefits for any week in which the applicant receives severance pay or which is covered by a lump-sum severance payment. Minn. Stat. § 268.085, subd. 3(a)(2) (2010). An application for unemployment benefits is effective the Sunday of the calendar week that the application was filed. Minn. Stat. § 268.07, subd. 3b(a) (2010). The amount of weekly unemployment benefits an applicant may receive is calculated by a statutory formula that uses the wages paid to the applicant during the “base period.” *Id.*, subd. 2a (2010). If an application’s effective date is during July, the base period begins April 1 of the preceding year and ends on March 31 of the year in which the application is effective. Minn. Stat. § 268.035, subd. 4(b) (2010).

DEED determined that relator established a benefits account on July 11, 2010, and that his base period was from April 2009 through March 2010. Consequently, relator’s base period does not include his wages from his employment because his employment ended in February 2009. Nor does it include his severance payment, which was paid to relator in February 2009. The base period only includes \$1,863 that relator received as a bonus in April 2009. Using the statutorily established calculation for benefits as a percentage of wages paid during the base period, DEED determined that relator’s weekly benefit amount was \$70 with a maximum benefit amount of \$614.

Relator argues that he should receive the maximum weekly wage benefit based on his salary at Citi Financial rather than the benefit amount calculated using only his April

2009 bonus because he only delayed his application due to the instructions he received from a DEED representative. But applying earlier would not necessarily have increased the total benefits relator could receive. Relator was ineligible for benefits for 18 months after becoming unemployed based on his severance pay. Had he applied for benefits before May 2010, the base period would have included wages relator received while employed as well as his severance payment and would have resulted in a larger weekly benefit. But he was not eligible to receive unemployment benefits until mid-August 2010 when his severance package expired, regardless of when he applied. In other words, the earlier relator applied for benefits, the greater his weekly benefit amount would have been (up to the maximum amount), but the fewer weeks he would have been eligible to receive any benefits during his benefit year because of his severance pay.

In order to receive the “full benefits” relator seeks, his application would have to be backdated. An application for unemployment benefits may be backdated one week if the applicant was unemployed during that week and requests backdating. Minn. Stat. § 268.07, subd. 3b(a). However, “[i]f an individual attempted to file an application for unemployment benefits, but was prevented from filing an application by [DEED], the application is effective the Sunday of the calendar week the individual first attempted to file an application.” *Id.* Such a circumstance arises if a relator makes a “bona fide attempt to apply for benefits by telephoning [DEED]” and was told to wait to apply by a DEED employee. *Morales v. Dep’t of Emp’t & Econ. Dev.*, 713 N.W.2d 882, 884 (Minn. App. 2006).

Here, when the ULJ asked relator whether relator actually attempted to file an application for benefits, relator replied that “[t]he attempt . . . was when [he] called and [he] said [he]’d like to file for unemployment And the [DEED representative] . . . told [him] tha[t] [he] ha[s] to wait and apply when the severance package expires.” The ULJ found it not credible that the DEED representative told relator that he could not file an application until his severance pay expired, and this court defers to the ULJ’s credibility assessment. *See Skarhus*, 721 N.W.2d at 344. But even if, under *Morales*, relator’s benefit account could be backdated to February 2009—when he testified that he called DEED and tried to apply for benefits—his benefit year would have been from February 2009 to February 2010, during which time his severance pay would have rendered him ineligible for any benefits.

To receive the “full benefits” relator asserts he is entitled to, his benefit account would have to be backdated to sometime before May 2010 to include wages from his employment and after August 2009 to avoid ineligibility from his severance. But the Minnesota legislature has determined that “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2010). It is unfortunate that relator may not have been given complete or accurate information about the implication of his severance pay on his base-period wages and eligibility during his benefit year. And we are sympathetic to relator’s belief that he is entitled to the maximum weekly wage benefit based on his previous salary. But our authority to grant relief is limited, and the statutes establishing the effective date of a benefit account and

the calculation of benefits are clear. Therefore, we conclude that the ULJ did not err by denying relator's request to backdate his benefit account.

Affirmed.