

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1488**

Timothy Dold,  
Relator,

vs.

Employer Solutions Staffing Group, III,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 7, 2012  
Affirmed  
Randall, Judge\***

Department of Employment and Economic Development  
File No. 27510936-3

Timothy Dold, Maple Grove, Minnesota (pro se relator)

Employer Solutions Staffing Group, III, Edina, Minnesota (respondent)

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

Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Randall,  
Judge.

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**RANDALL**, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he fraudulently collected unemployment benefits, arguing that he was confused about the benefit request system and that he received erroneous advice from a Department of Employment and Economic Development (DEED) employee. We affirm.

### FACTS

Relator Timothy Dold seasonally worked laying asphalt for ten years and applied for unemployment benefits during the winter months. In the winter of 2010, Dold found work plowing snow and as a mechanic through Employer Solutions Staffing Group, III (ESSG). Over the course of the winter, Dold worked full time some weeks and did not work during other weeks. Dold did not report any earnings to DEED but submitted requests for unemployment benefits during weeks he was not working.

DEED compared the unemployment benefits requested by Dold with the earnings his employers reported for tax purposes and found that Dold had not reported these winter earnings. DEED requested information from ESSG to determine whether Dold had worked during weeks for which he requested unemployment benefits. ESSG reported that Dold worked 50 hours per week for the weeks beginning November 21, November 28, and December 5, 2010, as well as January 9, 2011. Dold collected unemployment benefits associated with these weeks.

DEED issued determination of ineligibility in relation to the benefits received for those weeks. Dold appealed these determinations, and a hearing was held on April 19,

2011. The ULJ issued findings of fact and decisions regarding the relevant weeks, finding that Dold fraudulently received benefits for these weeks. Because Dold worked during weeks for which he requested unemployment benefits, Dold was ordered to repay the fraudulently collected benefits, along with a 40% fraud penalty as mandated by Minn. Stat § 268.18, subd. 2(a) (2010). Dold filed a request for reconsideration, arguing that he did not intend to commit fraud and that he relied on advice he received from an unidentified DEED employee. The ULJ affirmed the previous decisions. Dold appeals by writ of certiorari.

## **D E C I S I O N**

Dold argues that he did not fraudulently obtain benefits because he only submitted requests for benefits during weeks that he was not working. Dold argues that any error in the way he requested benefits stems from confusion about how to request benefits online and from advice he received from an unidentified DEED employee. When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). “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). An applicant must promptly repay any benefits obtained by fraud, and a penalty equal to 40% of the benefits fraudulently obtained must be assessed. *Id.*

Whether an applicant committed a particular act is a question of fact, and we will not disturb a ULJ's factual findings if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review a ULJ's findings of fact in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Determining whether an applicant committed fraud in connection with a request for benefits involves assessing the credibility of the applicant's testimony. *Burnevik v. Dep't of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985). "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2010). This court will affirm the ULJ's credibility determinations if "[t]he ULJ's findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

Dold argues that he only submitted requests for benefits during weeks that he was not working. To receive benefits, an applicant submits a request for benefits for each week through an online system. An applicant can only request benefits related to the two weeks preceding the request. When the applicant requests benefits for a given week, the online forms indicate the dates for which benefits are being requested, and ask the applicant to "[p]lease answer the following questions carefully for the week" indicated. The forms then ask whether the applicant "work[ed] or ha[d] a paid holiday during the

reporting period listed above.” In a case like Dold’s, where the hours he worked varied from week to week, the Minnesota Unemployment Insurance Information Handbook (the handbook) directs the applicant to “request benefits every week” because the “system will automatically determine whether you are due a payment and the amount.”

Dold appears to be correct in his assertion that when he was working, he did not request benefits. But the documentary evidence in the record also makes it clear that Dold did not log hours he worked into the DEED system. As a result, when he was not working, and would have been entitled to unemployment benefits, he was instead paid benefits for previous weeks, during which he had worked. This is because the computer system automatically used the earliest date for which no information had been entered. Dold testified that “every time I went to collect that I didn’t work, the date was off and it wouldn’t let me pick the correct date. It would just go to the top date, which was not the right date for me not working and it wouldn’t let me choose the other week . . . .” The ULJ asked Dold what he did when the correct date was not an option. Dold testified that he called DEED and was told by an employee that “it doesn’t matter” whether the date was correct “because we’ll see in our office that [he was] actually collecting for the week that [he was] not working even though the dates don’t match.” Dold could not remember the name of the employee he spoke with, and his testimony is the only evidence that he made any effort to avoid fraudulent collection of benefits.

Dold’s version of the facts in this case must be balanced against the other evidence in the record. First, the record of payment submitted by DEED, which was also apparently available to Dold, shows that the payments pertained to weeks during which

Dold had worked. Second, when submitting requests for benefits, the dates for which benefits related were stated in bold at the top of the page. For Dold to receive benefits, he had to answer questions about those weeks. Directly beneath the dates for which Dold requested benefits, the request form asked whether he “work[ed] or ha[d] a paid holiday during the reporting period listed above.” For each of the weeks for which Dold both received benefits and worked, Dold answered that he had *not* worked. Thus, Dold either ignored the questions being asked of him or intentionally gave false answers. The reporting requirements are discussed in the handbook given to all applicants upon applying for benefits. The handbook states that “[e]ach time [a claimant] request[s] a benefit payment, [the claimant will be] asked if [he or she] worked during the week [he or she is] requesting,” and “[i]f the number of hours that [the claimant] works varies from week to week, [the claimant] should request benefits every week. . . . [T]he system will automatically determine whether [the claimant is] due a payment and the amount.” The handbook makes it clear that “[t]here are substantial penalties—including criminal penalties—for failing to report that you are working, or failing to report all of your earnings each week when requesting benefits.”

The ULJ’s fraud finding is supported by focusing on evidence relating to the week of November 21 to November 27, 2010. Dold worked 50 hours that week but was also paid unemployment benefits for that week. Dold received unemployment benefits pertaining to that week on November 30, 2010, but was also paid for his work during that week on December 3, 2010. Dold necessarily requested benefits after that week was over, but before he was paid those benefits; therefore, Dold submitted a request for

benefits between November 28 and November 30, 2010. In the other weeks at issue here, the payment of unemployment benefits occurred after a week during which Dold was not working. It may have been possible to construe some of the claims as attributable to clerical errors by Dold. But for the week beginning November 21, 2010, Dold requested benefits immediately after a week during which he had worked. There is no legitimate interpretation of these facts other than that Dold wrongly requested benefits.

The evidence in the record supports the ULJ's determination. We conclude the ULJ did not err in deciding that Dold wrongly received unemployment benefits.

**Affirmed.**