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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1825**

Gregory A. Everson,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2013
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
Notice 1110

Gregory A. Everson, Fargo, North Dakota (pro se relator)

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

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator appeals from the decision of an unemployment law judge (ULJ) determining that \$8,619 in unemployment benefits erroneously paid to him is recoverable under Minn. Stat. §§ 270A.01–.12 (2012), the Minnesota Revenue Recapture Act. We affirm.

FACTS

Relator Gregory Everson applied for unemployment benefits on December 5, 2010 and received unemployment benefits totaling \$8,619 from December 12, 2010 to November 27, 2011. During that time, relator also received social security disability benefits. On December 29, 2011, the Minnesota Department of Employment and Economic Development (DEED) issued a determination of relator's ineligibility for unemployment benefits because relator "[was] receiving Primary Social Security Disability benefits" and "[t]he evidence [did] not show that the applicant is able to perform any gainful employment that can be expected to be available in the labor market." DEED determined that, as a result of his ineligibility, relator had been overpaid unemployment benefits of \$8,619.

On January 17, 2012, relator timely appealed the DEED determination of ineligibility for unemployment benefits. A hearing before a ULJ was scheduled for and held on February 6, 2012. But relator did not attend that appeal hearing because he had not picked up his mail containing the notice of hearing. The ULJ dismissed relator's appeal. Relator did not request reconsideration of the ULJ's February 6 order dismissing the appeal. The determination of relator's ineligibility for benefits and the overpayment of \$8,619 therefore became final on February 27, 2012, under Minn. Stat. § 268.105, subds. 1(d), 2(a) (2012).

DEED referred the resulting overpayment debt to the Minnesota Department of Revenue for recovery under the Minnesota Revenue Recapture Act. DEED issued a notice of revenue recapture to relator on February 7, 2012. On March 9, and after

expiration of the time for requesting reconsideration of the amount of the overpayment, relator requested a hearing on the issue of whether the overpayment was subject to revenue recapture. A hearing was held on April 19, 2012, at which relator asked the ULJ to reconsider the amount of overpaid benefits as determined by DEED. In an April 23, 2012 order, the ULJ declined to reconsider the amount of overpaid unemployment benefits, concluded that DEED had complied with the procedures of the Minnesota Revenue Recapture Act, and decided that the overpayment was a debt properly recoverable under the act. Relator requested reconsideration, and the ULJ affirmed the findings of fact and decision by order dated August 30, 2012. This appeal followed by a writ of certiorari.

D E C I S I O N

Relator appeals from the ULJ's determination that the overpaid unemployment benefits are recoverable under the Minnesota Revenue Recapture Act. When reviewing a ULJ's decision, we may affirm, remand 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 affected by an error of law or are unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2012).

“A determination or amended determination that holds an applicant ineligible for unemployment benefits for periods an applicant has been paid benefits is considered an overpayment of those unemployment benefits.” Minn. Stat. § 268.101, subd. 6 (2012). An applicant who “has received any unemployment benefits that the applicant was held

not entitled to, must promptly repay the unemployment benefits to the trust fund.” Minn. Stat. § 268.18, subd. 1(a) (2012). Here, relator was determined to have been overpaid by \$8,619 by order dated February 6, 2012, from which reconsideration was not requested. That decision became final on February 27, 2012, and we are not authorized to revisit that decision in this appeal. Minn. Stat. § 268.105, subs. 1(d), 7 (2012); *Smith v. Masterson Pers., Inc.*, 483 N.W.2d 111, 113 (Minn. App. 1992) (stating that a party is not entitled to reopen a final decision concerning disqualification from benefits if the disqualification decision has become final).

The determination of the overpayment having become final, the Minnesota Revenue Recapture Act permits a state agency to satisfy a debt owed to the agency by intercepting a debtor’s refund from the Minnesota Department of Revenue. Minn. Stat. §§ 270A.01–.12. The act defines a “debt” as a “legal obligation of a natural person to pay a fixed and certain amount of money, which equals or exceeds \$25 and which is due and payable to a claimant agency.” Minn. Stat. § 270A.03, subd. 5(a). The act requires the agency to send a written notice to the debtor that “assert[s] the right of the claimant agency to the [debtor’s] refund or any part thereof” and notifies the debtor of the right to request a hearing to contest the validity of the claim. Minn. Stat. § 270A.08, subs. 1(a), 2(b).

For purposes of revenue recapture, the overpaid unemployment benefits that DEED paid to relator are a “debt.” Relator received a written “Notice of Revenue Recapture” mailed by DEED on February 7, 2012. Relator timely requested a hearing under the Minnesota Revenue Recapture Act and was afforded a hearing before a ULJ.

The ULJ determined that DEED had properly sought recapture under the Minnesota Revenue Recapture Act. The ULJ correctly limited the scope of her determination to the recapture procedures and declined to consider relator's arguments regarding the amount of the debt because relator had failed to timely appeal that determination.

Relator's principal argument now is that, although he admits being overpaid unemployment benefits, he disagrees with the amount of the debt. But, as noted, the overpayment determination became final on February 27, 2012, and is not the subject of this appeal. *See* Minn. Stat. § 268.105, subd. 1(d) (2012) (stating that the ULJ's summary order dismissing an appeal becomes final absent a request for reconsideration). Further judicial review of the overpayment determination is not available to relator. *Id.*, subds. 1(d), 7(a) (2012). The ULJ properly declined to revisit the computation of the overpayment, and the record supports the ULJ's determination that the amount of overpaid unemployment benefits received by relator was subject to revenue recapture.

Affirmed.