

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2021**

Jeffrey Tynjala,
Relator,

vs.

United Taconite LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 29, 2010
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 23050421-3

Jeffrey Tynjala, Makinen, Minnesota (pro se relator)

United Taconite LLC, Eveleth, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator appeals the unemployment-law judge's (ULJ) decision that he was overpaid \$1,132 in unemployment benefits. Because the ULJ was correct that relator was ineligible for benefits during the two weeks in which he received vacation pay in excess of his weekly benefit amount, we affirm in part. But because the factual record is not clear as to whether relator was overpaid, we reverse in part and remand.

FACTS

Relator Jeffrey Tynjala is a miner at United Taconite in Eveleth. He was laid off for ten weeks, starting on April 26, 2009. During the layoff period, United Taconite recalled relator for two weeks, but required him to take this time as paid vacation. United Taconite then returned relator to layoff status until July 6, 2009, when it recalled relator to work.

Upon his initial layoff, relator applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) determined that he was eligible for benefits of \$566 per week. When DEED became aware that relator received vacation pay that exceeded his weekly benefit amount, DEED determined that relator was ineligible for two full weeks and one partial week of unemployment benefits.

Relator appealed, arguing that he should have received full unemployment benefits during the week in which he received only partial vacation pay. After a hearing, the ULJ found that the vacation pay relator received during the layoff period was "deductible income." Because the law requires that vacation pay be applied to the period

immediately following the last day of employment, the ULJ concluded that relator had received an overpayment of \$1,132, the equivalent of two weeks of unemployment benefits. Relator requested reconsideration, and the ULJ affirmed her decision. This certiorari appeal follows.

D E C I S I O N

This court “may affirm the decision of the [ULJ] or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision” are affected by an error of law or unsupported by substantial record evidence. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2008).

Applicants are ineligible to receive “unemployment benefits for any week with respect to which the applicant . . . has received . . . payment, equal to or in excess of the applicant’s weekly unemployment benefit amount, in the form of: (1) vacation pay paid upon temporary, indefinite, or seasonal separation.” Minn. Stat. § 268.085, subd. 3(a) (2008). The ineligibility occasioned by vacation pay is “applied to the period immediately following the last day of employment.” *Id.*, subd. 3(b) (2008).

We first note that the vacation payments relator received are not “deductible income,” although DEED records and the ULJ’s decision label them as such. Vacation pay is not considered income. Rather, it is a payment that delays eligibility to receive unemployment benefits. *Id.*, subd. 3(a). Vacation payments are distinguished from and incompatible with “deductible earnings.” *Id.*, subd. 5 (2008). The imprecise use of terminology causes confusion in interpreting an already obtuse statutory scheme.

Next, we turn to the issue presented in this appeal—whether the ULJ erred in determining that relator received two weeks of benefits, or \$1,132, for which he was not eligible.

Under Minnesota law, the ULJ correctly ruled that relator was not eligible to receive unemployment benefits during the two weeks in which he received vacation pay in excess of his weekly benefit amount. *See id.*, subd. 3(a). The ULJ is also correct that these two weeks of ineligibility are applied to the first two weeks after relator’s layoff. *See id.*, subd. 3(b) (applying vacation payments “to the period immediately following the last day of employment”). Minnesota law also requires relator to serve a one-week waiting period before he may start receiving benefits. *See id.*, subd. 1(5) (2008) (requiring a nonpayable waiting period of one week during which the applicant is otherwise entitled to some benefits). Accordingly, we affirm the ULJ’s determination that relator was only eligible for benefits during seven weeks of his ten-week layoff.

But this conclusion does not end our analysis. Relator challenges the sufficiency of the evidence supporting overpayment, arguing that the two-week ineligibility period related to his receipt of vacation pay had already been subtracted from his benefits when the ULJ determined that he had been overpaid. Relator claims that he was not overpaid, because although the ineligibility period occurred in the middle of his ten weeks and not at the beginning, there were two “vacation” weeks during which benefits were not applied to his account. In support of this assertion, relator relies on a one-page printout of his DEED account information that he submitted to the ULJ on reconsideration. Because a party may not submit additional evidence in connection with a reconsideration

request, except when asking the ULJ to order an additional evidentiary hearing, we do not consider relator's new information on appeal. *See* Minn. Stat. § 268.105, subd. 2(c) (2008) (stating that a ULJ may not consider additional evidence on a request for reconsideration except to decide whether to order an additional evidentiary hearing). DEED argues that the ULJ's determination that relator was overpaid for two weeks is correct, citing to the fact that relator admits to receiving vacation pay. But this argument does not address the underlying factual question of whether DEED had already incorporated this period of ineligibility into relator's payment schedule at the time the ULJ made her decision.

Because the record does not allow us to determine what benefit payments relator actually received or whether the ULJ's finding that relator was overpaid has evidentiary support, we reverse in part. We remand to the ULJ for the limited purpose of determining whether relator received the seven weeks of benefits to which he was entitled and adjusting his payments, if appropriate.

Affirmed in part, reversed in part, and remanded.