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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2095**

Carla Misfeldt,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed August 3, 2010
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 22705981-4

Carla Misfeldt, Brooklyn Park, Minnesota (pro se relator)

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

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Carla Misfeldt was denied unemployment benefits because she earned only \$248 in wage credits during her statutory “base period” of January 1, 2008, to December 31, 2008. On appeal, she argues that the unemployment law judge (ULJ) erred by not permitting her to select an “alternate base period” of January 1, 2006, to December 31,

2006. We conclude that Misfeldt may not select an alternate base period that is two years before her ordinary base period. Therefore, we affirm.

FACTS

Misfeldt worked for Regina Medical Center from August 2007 to August 2008. She applied for unemployment benefits on April 5, 2009. The Department of Employment and Economic Development (DEED) made an initial determination that Misfeldt did not earn sufficient wage credits during her ordinary base period of January 1, 2008, through December 31, 2008.

Misfeldt filed an administrative appeal. A ULJ held a telephonic hearing in August 2009. At the hearing, Misfeldt argued that DEED should use an alternate base period of May 2004 to November 2006 when determining whether she has sufficient wage credits. The ULJ upheld the initial determination. After Misfeldt requested reconsideration, the ULJ affirmed her prior decision. Misfeldt appeals by way of a writ of certiorari.

DECISION

Misfeldt argues that the ULJ erred by considering her base period to be January 1, 2008, to December 31, 2008, and by rejecting her request for an “alternate base period.” This court reviews a ULJ’s benefits decision to determine whether the findings, inferences, conclusions of law, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). We apply a *de novo* standard of review to the ULJ’s interpretation of the unemployment statutes, *Abdi v. Department of Employment & Econ. Dev.*, 749

N.W.2d 812, 815 (Minn. App. 2008), and to the ultimate determination whether an applicant is entitled to benefits, *Carlson v. Department of Employment & Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008).

DEED will pay unemployment benefits to an applicant who meets the statutory eligibility requirements. Minn. Stat. § 268.069, subd. 1 (2008). A person seeking benefits must file an application and establish a benefit account in accordance with Minn. Stat. § 268.07 (2008). *Id.*, subd. 1(1). DEED then “calculates the applicant’s weekly benefit amount and the maximum unemployment benefits available, if any, based on ‘all the covered employment in the base period.’” *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010) (quoting Minn. Stat. § 268.07, subd. 1(b)) (emphasis omitted). To establish a benefit account, an applicant must have earned a minimum amount of “wage credits.” Minn. Stat. § 268.07, subd. 2(a). “Wage credits” are defined as “the amount of wages paid within an applicant’s base period for covered employment.” Minn. Stat. § 268.035, subd. 27 (2008). Specifically, an applicant for unemployment benefits must have earned a minimum of \$1,000 in any quarter of the applicable base period and a minimum of \$250 in each of the other quarters of the applicable base period. *See* Minn. Stat. § 268.07, subd. 2(a).

When determining whether an applicant has earned the minimum amount of wage credits, an applicant’s base period ordinarily is “the first four of the last five completed calendar quarters before the effective date of an applicant’s application for unemployment benefits.” Minn. Stat. § 268.035, subd. 4(1) (2008). But “if the applicant has insufficient wage credits to establish a benefit account under clause (1), an alternate

base period . . . will be used.” Minn. Stat. § 268.035, subd. 4(3) (2008). And “if the applicant has insufficient wage credits to establish a benefit account under clauses (1) and (3)” of section 268.035, subdivision 4, *i.e.*, pursuant to either the ordinary base period or the alternate base period, “the applicant may request an extended base period,” if the applicant, during his or her ordinary base period, “received workers’ compensation for temporary disability” under a workers’ compensation scheme or “received compensation for loss of wages from some other source.” Minn. Stat. § 268.035, subd. 4(2) (2008). Under clause (2), an applicant may extend his or her base period back in time for as many as four calendar quarters, depending on the length of time that the applicant received compensation for loss of work. *Id.*

The record reveals that in the five calendar quarters preceding her application for benefits, Misfeldt earned the following amounts of wage credits:

2008, first quarter	\$224.
2008, second quarter	\$0.
2008, third quarter	\$24.
2008, fourth quarter	\$0.
2009, first quarter	\$0.

The ULJ determined that Misfeldt’s applicable base period is January 1, 2008, to December 31, 2008, the ordinary base period pursuant to clause (1) of section 268.035, subdivision 4. The ULJ applied the ordinary base period after determining that Misfeldt “is not eligible for the extended base period” pursuant to clause (2) of the statute because she “did not receive workers’ compensation or loss of wages compensation during” her normal base period of January 1, 2008, to December 31, 2008. Misfeldt earned only \$248 in wage credits during her ordinary base period, which is less than the minimum

amount required to establish a benefit account. *See* Minn. Stat. § 268.07, subd. 2(a). Accordingly, the ULJ determined that Misfeldt has insufficient wage credits to establish a benefit account.

On appeal, Misfeldt contends that the ULJ misinterpreted her argument. She states that she was not seeking an “extended base period” pursuant to clause (2) of the statute, as the ULJ understood, but, rather, an “alternate base period” pursuant to clause (3) of the statute. She now contends that she should be allowed to select an alternate base period of January 1, 2006, to December 31, 2006. Accordingly, we will analyze whether Misfeldt is entitled to benefits based on an alternate base period.

A person is eligible for an alternate base period pursuant to clause (3) of the statute only “if the applicant has insufficient wage credits to establish a benefit account under clause (1).” Minn. Stat. § 268.035, subd. 4(3). In that event, an alternate base period consisting of “the last four completed calendar quarters before the date the applicant’s application for unemployment benefits is effective *will be used.*”¹ *Id.* (emphasis added). Misfeldt may not select *any* four-quarter period to be her alternate base period because the statute plainly states that an alternate base period must consist of the four completed calendar quarters immediately preceding an application for benefits.

¹It appears that DEED calculates wage credits earned in an applicant’s alternate base period as a matter of course if an applicant has insufficient wage credits in his or her ordinary base period. In its brief, DEED states, “When an applicant applies for unemployment benefits, the Department automatically determines whether the applicant has earned sufficient wage credits during the base period and, if not, whether the applicant earned sufficient wage credits in the statutorily-prescribed ‘alternate base period.’”

See id. Thus, Misfeldt cannot seek unemployment benefits based on wage credits earned between January 1, 2006, and December 31, 2006.

Misfeldt's application for unemployment benefits was effective on April 5, 2009. Pursuant to clause (3) of the statute, Misfeldt's alternate base period is April 1, 2008, to March 31, 2009. During her alternate base period, Misfeldt earned only \$24 in wage credits, even less than what she earned during her ordinary base period.

In sum, Misfeldt is not eligible for unemployment benefits because she did not earn the minimum amount of wage credits during either her ordinary base period or her alternate base period.

Affirmed.