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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1527**

Harriet M. Liedtke,  
Relator,

vs.

Questar Assessment, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent

**Filed June 25, 2012  
Affirmed  
Wright, Judge**

Minnesota Department of Employment and Economic Development  
File No. 27729564-2

Harriet M. Liedtke, Burnsville, Minnesota (pro se relator)

Questar Assessment, Inc. Apple Valley, Minnesota (respondent)

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

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

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

## UNPUBLISHED OPINION

**WRIGHT**, Judge

Relator challenges the unemployment law judge's (ULJ) decision affirming the unemployment-benefits determination of the Minnesota Department of Employment and Economic Development (department). Relator argues that (1) she is entitled to continue receiving federal extended unemployment benefit payments, (2) the base period and effective date of her third state unemployment benefit account are incorrect, and (3) she was denied her right to a hearing. We affirm.

### FACTS

Relator Harriet M. Liedtke established a state unemployment benefit account effective March 1, 2009 through February 27, 2010. Based on her previous year's income, Liedtke was eligible to receive a maximum yearly state unemployment benefit amount of \$7,158, to be disbursed at a weekly-benefit-amount rate of \$300. Liedtke exhausted her maximum yearly state unemployment benefit amount in November 2009 and began receiving federally funded extended unemployment benefit payments of \$300 weekly for the remainder of the unemployment benefit year.

When Liedtke's unemployment benefit year expired in February 2010, she became eligible for a second state unemployment benefit account and stopped receiving federal extended unemployment benefit payments. Based on her previous year's income, Liedtke was eligible to receive a maximum yearly state unemployment benefit amount of \$3,702, to be disbursed at a weekly-benefit-amount rate of \$162. Liedtke exhausted this

account in September 2010 and resumed collecting federal extended unemployment benefit payments of \$300 weekly.

On March 9, 2011, the department determined that Liedtke was not eligible for a third state unemployment benefit account because she had not earned sufficient wages during the applicable base period, which constituted the entire 2010 calendar year. Specifically, Liedtke had earned \$2,520 in the second calendar-year quarter of 2010 and had earned no income in any other quarter of that calendar year. Liedtke submitted a Wage and Employer Correct Sheet, asserting that \$742.50 of those second-quarter earnings were attributable to the first calendar quarter of 2010. But the department did not amend its determination.

Liedtke continued to collect federal extended unemployment benefit payments until April 2011, when she did not apply for unemployment benefits for several weeks because she was temporarily employed. She subsequently reapplied for state unemployment benefits, and the department determined that Liedtke was eligible for a third state unemployment benefit account, effective April 24, 2011 through April 21, 2012. After becoming eligible for extended unemployment benefits, Liedtke stopped receiving federal extended unemployment benefit payments. Based on her previous year's income, Liedtke was eligible to receive a maximum yearly state unemployment benefit amount of \$840, to be disbursed at a weekly rate of \$96.

Liedtke appealed the department's determination, arguing that she should continue to receive weekly federal extended unemployment benefit payments at the previous weekly amount of \$300 and challenging the department's determination of the base

period and effective date of her third state unemployment benefit account. The ULJ held a telephonic evidentiary hearing and subsequently issued findings of fact and a decision affirming the department's determination. Liedtke filed a request for reconsideration, following which the ULJ affirmed his initial decision. This certiorari appeal followed.

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

When reviewing the decision of a ULJ, we may affirm the decision, remand the case 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 “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). The interpretation of a statute presents a question of law, which we review de novo. *Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385, 389 (Minn. App. 2010).

### **I.**

Liedtke argues that she is entitled to continue receiving the same weekly federal extended unemployment benefit payments of \$300 that she received from November 2009 until March 2010 and from September 2010 until April 2011. If an applicant collects the entire state unemployment benefit amount to which the applicant is eligible before the end of the unemployment benefit year, the applicant may be eligible to receive federal extended unemployment benefit payments. *Voge v. Dep't of Emp't & Econ. Dev.*, 794 N.W.2d 662, 665 (Minn. App. 2011). To be eligible for these benefit payments, the

applicant must meet the requirements set forth in Minn. Stat. § 268.115, subd. 3 (2010), which conform to the federal requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. § 3304 (2006) (Extended Unemployment Compensation Act).

Congress has since created intermediate federal unemployment benefit programs, which include the four-tiered emergency unemployment compensation program (emergency program). Supplemental Appropriations Act of 2008, Pub. L. No. 110-252, sec. 4002, 122 Stat. 2323, 2354-55, *amended by* Unemployment Compensation Extension Act of 2008, Pub. L. No. 110-449, secs. 2-3, 122 Stat. 5014, 5014-15 *and* Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, secs. 2-4, 123 Stat. 2984, 2984-86. An unemployment benefit recipient who qualifies for the emergency program can establish an “emergency unemployment compensation account” (emergency account). Supplemental Appropriations Act of 2008, sec. 4002(a), 122 Stat. at 2354. An emergency account provides an unemployment benefit recipient with continued weekly unemployment benefit payments at the same weekly rate that the recipient had been receiving before the recipient’s state unemployment benefit amount was exhausted. Supplemental Appropriations Act of 2008, sec. 4002(b)(2), 122 Stat. at 2355.

For the relevant time period, the emergency program’s extended unemployment benefit payments were available in four tiers of limited duration. An emergency account recipient is initially eligible for first-tier benefits, which is the lesser of 80 percent of the recipient’s maximum yearly benefit amount or 20 times the recipient’s average weekly

benefit amount for the benefit year. Unemployment Compensation Extension Act of 2008, sec. 2, 122 Stat. at 5014. If the recipient's first-tier benefits are exhausted, the recipient may be eligible for second-tier benefits equal to the lesser of 54 percent of the recipient's maximum yearly benefit amount or 14 times the recipient's average weekly benefit amount for the benefit year. Worker, Homeownership, and Business Assistance Act of 2009, sec. 2, 123 Stat. at 2984. If the recipient's second-tier benefits are exhausted, the recipient may be eligible for third-tier benefits equal to the lesser of 50 percent of the recipient's maximum yearly benefit amount or 13 times the recipient's average weekly benefit amount for the benefit year. *Id.*, sec. 3, 123 Stat. at 2984-85. And if the recipient's third-tier benefits are exhausted, the recipient may be eligible for fourth-tier benefits equal to the lesser of 24 percent of the recipient's maximum yearly benefit amount or six times the recipient's average weekly benefit amount for the benefit year. *Id.*, sec. 4, 123 Stat. at 2985-86. Here, it is not disputed that Liedtke has entered the third-tier benefit phase of her emergency account, which permits her to collect a total of \$3,579.<sup>1</sup>

Liedtke argues that, because she has received only \$1,684 of her third-tier emergency program extended unemployment benefit payments, the department owes her the \$1,895 remaining in her emergency account. To be eligible for emergency program extended benefit payments, an applicant must be an "exhaustee," which means an applicant who has no claim to any other state or federal unemployment benefits and who

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<sup>1</sup> This amount is 50 percent of Liedtke's maximum yearly state unemployment benefit amount of \$7,158, which she received during her state unemployment benefit year that became effective beginning in March 2009.

(1) has received the maximum amount of regular unemployment benefit payments available to the applicant before the unemployment benefit year has expired, or (2) has insufficient wage credits to establish a new state unemployment benefit account after the unemployment benefit year has expired. Minn. Stat. § 268.115, subs. 1(7), 3 (2010).

An applicant is no longer an exhaustee, however, if the applicant earns enough “wage credits” during the applicant’s base period to become eligible to establish a new state unemployment benefit account. *Id.*, subd. 1(7); *see* Minn. Stat. § 268.035, subd. 27 (2010) (defining “wage credits” as amount of wages paid during applicant’s base period for covered employment). The result is that the applicant cannot collect any remaining emergency program extended unemployment benefit payments. *Voge*, 794 N.W.2d at 665. Here, Liedtke ceased to be an “exhaustee” in April 2011 because she had earned sufficient wages from her 2010 employment to establish a new state unemployment benefit account. *See* Minn. Stat. § 268.07, subd. 2(a)(2) (2010) (stating that applicant is eligible to establish unemployment benefit account if applicant earned wage credits of \$1,000 or more in highest-earning quarter of applicant’s base period). Thus, Liedtke cannot collect any remaining emergency program extended unemployment benefit payments so long as she is entitled to receive state unemployment benefits.

Citing the Unemployment Compensation Extension Act of 2010, Liedtke argues that the department should pay her the remaining benefit payments from her emergency account before it pays her state unemployment benefits. On July 22, 2010, the Unemployment Compensation Extension Act of 2010 amended the Extended Unemployment Compensation Act to provide that, if certain conditions are met,

subsequent state unemployment benefit year payments can be deferred until the remaining emergency program extended unemployment benefit payments have been fully disbursed. Pub. L. No. 111-205, sec. 3(a), 124 Stat. 2236, 2237; *Voge*, 794 N.W.2d at 665-66. This amendment, however, is not retroactive and applies only to individuals whose benefit year expired after the date of the amendment's enactment in July 2010. Unemployment Compensation Extension Act of 2010, sec. 3(b), 124 Stat. at 2238. For the purpose of determining the applicability of this amendment, "benefit year" means the benefit year during which the individual first established the emergency account. *See id.* (referencing "benefit years" as described in the Supplemental Appropriations Act of 2008, sec. 4002); Supplemental Appropriations Act of 2008, sec. 4002, 122 Stat. at 2354-55 (calculating individual's emergency account based on individual's benefit year when the emergency account is first established). Here, Liedtke was determined to be eligible to receive emergency program extended unemployment benefit payments during her state unemployment benefit year that became effective beginning in March 2009. That benefit year expired in February 2010. Thus, the July 2010 amendment does not apply to Liedtke's circumstances.

Accordingly, the ULJ correctly determined that Liedtke is not entitled to continue receiving emergency program extended unemployment benefit payments.

## II.

Liedtke also argues that the base period and effective date of her third state unemployment benefit account are incorrect. The record demonstrates that the department found Liedtke ineligible to establish a third state unemployment benefit

account effective February 27, 2011 because she had not earned sufficient wages from her 2010 employment. Liedtke subsequently reapplied and the department found Liedtke eligible to establish a third state unemployment benefit account effective April 24, 2011 because she *had* earned sufficient wages from her 2010 employment. Liedtke challenges these disparate determinations as inequitable and contends that she, rather than the department, should be permitted to choose when her benefit year begins.

**A.**

Liedtke argues that the department's eligibility determinations are inequitable<sup>2</sup> because the department found the same base period wages insufficient to establish a benefit account in February 2011 but sufficient to establish a benefit account in April 2011.

Minnesota's unemployment insurance statute provides that a benefit account may be established using the requirements of either the "primary base period" or the "secondary base period." Minn. Stat. § 268.07, subd. 2(a). In either case, the base period comprises four calendar quarters. Minn. Stat. § 268.035, subd. 4 (2010). Under the primary base period requirements, the applicant must have wage credits of \$1,000 or more during the highest-earning quarter of the applicant's base period *and* wage credits of \$250 or more during the remainder of the base period. Minn. Stat. § 268.07, subd. 2(a)(1). Under the secondary base period requirements, the applicant must have wage

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<sup>2</sup> We observe that Minnesota's unemployment benefit law expressly prohibits denying or granting unemployment benefits based on equitable considerations. Minn. Stat. § 268.069, subd. 3 (2010); *accord Voge*, 794 N.W.2d at 667.

credits of \$1,000 or more during the highest-earning quarter, but need not have earnings in any other quarter. *Id.*, subd. 2(a)(2).

The department contends that Liedtke is ineligible to establish an unemployment benefit account effective in February 2011 because it used the primary base period requirements and she did not have wage credits of \$250 or more in the three lowest earning quarters. But when Liedtke subsequently reapplied for unemployment benefits, the department found her eligible to establish an unemployment benefit account effective in April 2011 because it used the secondary base period requirements, which do not require wage credits in any quarter other than the applicant's highest-earning quarter. Liedtke challenges the department's use of different base period requirements for her two benefit account applications because it results in disparate eligibility determinations. But under Minnesota's unemployment insurance statute, the primary base period requirements must be used for an application that is effective in the second or third month of a calendar-year quarter, which includes February and March. Minn. Stat. § 268.035, subd. 4(a). And the secondary base period requirements must be used for an application that is effective in the first month of a calendar-year quarter, which includes April. *Id.*, subd. 4(b). We observe that these statutory requirements can result in disparate eligibility determinations, as occurred here. Nonetheless, the department correctly applied the base period requirements to each of Liedtke's applications because her two applications were filed in different months.

## B.

Leidtke also argues that she, rather than the department, should be permitted to choose when her benefit year begins; and she contends that her third unemployment benefit year began on February 27, 2011. This argument is contrary to Minnesota law. Under Minnesota law, an application for state unemployment benefits is effective the Sunday of the calendar week that the application is filed; neither the department nor the applicant is permitted to backdate the effective date of a state unemployment benefit account after it has been established. *See* Minn. Stat. §§ 268.07, subd. 3b(a) (providing that an application for a state unemployment benefit account may be backdated one calendar week before the Sunday of the week the application was filed only if applicant requests backdating at the time the application is filed); 268.085, subd. 2 (providing that “[a]n applicant is ineligible for unemployment benefits for any week . . . that occurs before the effective date of a benefit account”) (2010). Here, the record reflects that Liedtke did not establish an unemployment benefit account in February 2011, and she subsequently reapplied for an unemployment benefit account during the week of Sunday, April 24, 2011, without requesting backdating. Thus, the department correctly determined that Liedtke’s third unemployment benefit year began on April 24, 2011.

Liedtke contends that she was “coerced” or “forced” to submit a new application for unemployment benefits—and thus establish a new state unemployment benefit account—because the department’s online system would not permit her to request benefits without submitting a new application. This prevented Liedtke from continuing to collect emergency program extended unemployment benefit payments. An applicant

cannot collect emergency program extended unemployment benefit payments if the applicant is entitled to receive state unemployment benefits. *Voge*, 794 N.W.2d at 666. And an applicant's eligibility for state unemployment benefits under Minnesota's unemployment insurance statute generally is determined based on a quarterly system. Minn. Stat. §§ 268.035, subd. 4, 268.07, subd. 2. Requiring an applicant who receives emergency program extended unemployment benefit payments to submit a new state unemployment benefit application is not coercive; rather, the requirement complies with state and federal law.

Accordingly, the ULJ correctly determined that the April 24, 2011 effective date of Liedtke's state unemployment benefit account is valid.

### **III.**

Liedtke next contends that she was denied the right to a hearing when she disputed the department's March 2011 determination. In its March 2011 determination letter, the department advised Liedtke that she could appeal the department's determination before it became final on March 29, 2011, or submit a "Wage and Employer Correct Sheet" to correct base period wages without filing an appeal. The record reflects that Liedtke submitted a Wage and Employer Correction Sheet; she did not file an appeal. Therefore, Liedtke is not entitled to relief on this ground.

**Affirmed.**