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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0353**

Jari Brenner,
Relator,

vs.

Harris IT Services Corporation,
Respondent,

Tech Pro, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed January 14, 2013
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 28935880-2

Jari A. Brenner, St. Paul, Minnesota (pro se relator)

Harris IT Services Corporation, Melbourne, Florida (respondent)

Tech Pro, Inc., Roseville, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that relator must repay two weeks of federal extended unemployment compensation that was paid to her due to an error of the Minnesota Department of Employment and Economic Development (DEED). We affirm.

FACTS

Relator Jari Brenner was laid off from her job as a technical writer for respondent Harris IT Services Corporation on February 24, 2010. Brenner immediately established a Minnesota standard unemployment-insurance benefits account (STUI) effective the week of February 21, 2010. Brenner received a weekly benefit of \$585. In September 2010, after the STUI was exhausted, Brenner began receiving Federal Emergency Unemployment Compensation (EUC) in the same weekly amount. Those benefits were exhausted in October 2011.

In October 2011, DEED became aware that Brenner had sufficient earnings from contract work during the second quarter of 2011 to establish another STUI as of October 2, 2011, with a base period of July 1, 2010, to June 30, 2011. On November 8, 2011, DEED notified Brenner that the benefit for the new STUI was \$139 per week. Due to a

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

DEED error, Brenner also received, for two weeks, Federal-State Extended Benefits (extended benefits), to which she would have been entitled only if she had not had sufficient wages to establish the October 2, 2011 STUI. On November 18, 2011, DEED notified Brenner that she was no longer eligible for benefits on the 2010 account and that she had been overpaid in the amount of \$1,170 paid as extended benefits for the weeks of October 16 and October 23, 2011.

Brenner appealed. After a hearing, the ULJ determined that Brenner had received extended benefits for two weeks in October 2011 to which she was not entitled and upheld the determination that she had to repay the overpayment. Brenner requested reconsideration, and the ULJ affirmed the determination of overpayment. This appeal by writ of certiorari followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court 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). Interpretation of a statute presents a question of law, which this court reviews de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

Brenner argues that the extended benefits payments did not constitute an overpayment because she is entitled to them. The statute states that “[i]f an extended unemployment benefit period is in effect, an applicant is paid extended unemployment benefits [under the extended benefits program] from the trust fund for any week in the applicant’s eligibility period if the applicant . . . is an ‘exhaustee.’” Minn. Stat. § 268.115, subd. 3 (2010). An exhaustee is “an applicant who, in the eligibility period[,] . . . the benefit year having expired, has insufficient wage credits to establish a new benefit account” Minn. Stat. § 268.115, subd. 1(7) (2010).

Brenner exhausted her EUC benefits as of October 15, 2011. Brenner qualified for the second STUI because she earned more than \$1,000 in the second quarter of 2011. *See* Minn. Stat. § 268.07, subd. 2 (2010) (“[T]o establish a benefit account: (1) using the primary base period . . . an applicant must have: (i) wage credits in the high quarter of \$1,000 or more”). Because she qualified for the second STUI before the expiration of her first EUC benefits and the second STUI had not yet expired, Brenner is *not* an exhaustee. *See* Minn. Stat. § 268.115, subd. 1(7); *Voge v. Dep’t of Emp’t & Econ. Dev.*, 794 N.W.2d 662, 665 (Minn. App. 2011) (“An applicant is no longer an exhaustee . . . if the applicant earns enough ‘wage credits’ during the current unemployment benefit year to become eligible to establish a second unemployment benefit account after the first unemployment benefit year expires.”). Because Brenner is not an exhaustee, she is not entitled to any extended benefit payments. Minn. Stat. § 268.115, subd. 3. The extended benefit payments, therefore, were made in error, and Brenner must repay them under Minn. Stat. § 268.17, subd. 1(a) (2010) (stating that “[a]ny applicant who (1) because of a

determination or amended determination issued under section 268.07 or 268.101, or any other section of this chapter, or (2) because of an appeal decision or order under section 268.105, has received any unemployment benefits that the applicant was held not entitled to, must promptly repay the unemployment benefits to the trust fund”). The ULJ did not err by concluding that Brenner was overpaid and must repay the overpayment.^{1 2}

Affirmed.

¹ DEED exercised its right under Minn. Stat. § 268.18, subd. 1(b) (2010), to “offset from any future unemployment benefits otherwise payable the amount of the overpayment.” The parties agree that Brenner exhausted her second STUI before the overpayment was repaid through deductions from her benefit, thereby leaving a balance of \$569 owing to DEED at the time her second STUI was exhausted.

² On appeal, Brenner argues that she is eligible for extended benefits after the 2011 STUI was exhausted. Although DEED has addressed this issue in its brief on appeal, this issue was not presented or addressed by the ULJ and is, therefore, beyond the scope of this appeal.