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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0712**

Jodi A. Stromdahl,
Relator,

vs.

Minnesota Department of Natural Resources,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 22, 2008
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 16832 06

Jodi A. Stromdahl, 3317 Beyer Road, Duluth, MN 55811 (pro se relator)

Minnesota Department of Resources, 500 Lafayette Road, St. Paul, MN 55155-4037
(respondent)

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MN 55101-1351 (for respondent Department of Employment and Economic
Development)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On certiorari appeal, relator Jodi A. Stromdahl argues that the unemployment law judge (ULJ) erred in determining that she did not work in covered employment and was therefore disqualified from receiving unemployment benefits. We affirm.

DECISION

Relator argues that the ULJ's decision should be reversed because her work as a smoke chaser was not temporary or sporadic and because her employer, the Department of Natural Resources (DNR), issued an employment manual that relator contends indicates that she is entitled to unemployment benefits. We disagree.

This court must affirm the ULJ's determination unless the decision derives from unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006). We review the ULJ's factual findings in the light most favorable to the decision and will not disturb them as long as there is substantial evidence that tends to sustain those findings. *Id.*; *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Id.* at 345.

Under Minnesota law, an applicant must meet five requirements to receive unemployment benefits. Minn. Stat. § 268.069, subd. 1 (2006). The first requirement is that an applicant file an application for unemployment benefits and establish a benefit account in accordance with Minn. Stat. § 268.07 (2006). *Id.* In order to establish a

benefit account, an applicant must earn a certain amount of “wage credits” paid within an applicant’s base period for “covered employment.” Minn. Stat. § 268.035, subd. 27 (2006). “Covered employment” is defined as any employment performed in Minnesota not otherwise excluded as “noncovered employment.” See Minn. Stat. § 268.035, subd. 12 (2006). Minn. Stat. § 268.035 excludes from coverage “employment for Minnesota, a political subdivision, or instrumentality thereof, as an employee serving only on a temporary basis in case of fire, flood, tornado, or similar emergency” Minn. Stat. § 268.035, subd. 20(13) (2006).

Relator acknowledges that the employment at issue here is her work for the DNR as a smoke chaser. We addressed the question of whether smoke chasers are eligible for unemployment benefits in 1992 in *Gust v. Minn. Dep’t of Nat. Res.*, 486 N.W.2d 7, 9-10 (Minn. App. 1992). In *Gust*, as here, dry weather conditions required the smoke chasers to work a longer season than usual, from March through October. *Id.* at 8. Nevertheless, the *Gust* court upheld a determination that the smoke chasers were excluded from eligibility for unemployment benefits because they performed services “as . . . employee[s] serving only on a temporary basis in the case of fire, storm, snow, earthquake, flood or similar emergency.” *Id.* at 9 (quotation omitted).

We conclude that *Gust* controls our decision here. Relator first argues that the statutory language “serving on a temporary basis” is vague, and that her work as a smoke chaser has not been temporary. We rejected this argument in *Gust*, noting that “[a]s commonly accepted, ‘temporary’ is an antonym of ‘permanent.’” 486 N.W.2d at 9 (quotation omitted). Although relator has been performing smoke-chasing work for the

past 15 years, she must reapply each year by passing a physical test and submitting current tax information. This indicates that, like the smoke chasers in *Gust*, relator's work with the DNR is temporary.

Relator also argues that her work as a smoke chaser was not sporadic, as determined by the ULJ. But by her own admission, relator "worked 38% of the time that a person with a job of 40 hours a week for 10 months would work." Moreover, the proper inquiry is not whether the work was sporadic, but whether it was excluded from coverage as "on a temporary basis in case of fire." *See* Minn. Stat. § 268.035, subd. 20(13). We conclude that the ULJ properly determined that relator's work as a smoke chaser was "noncovered employment" under Minn. Stat. § 268.035 (2006).

Finally, relator claims that, based on the job descriptions in the DNR Wildfire Protection Business Management Manual, the job she performs is entitled to unemployment compensation benefits. But whether an applicant receives unemployment benefits is determined by statute. *See* Minn. Stat. § 268.07, subd. 1(b) (2006) ("based upon all the covered employment in the base period[,] the commissioner shall determine the weekly unemployment benefit amount available"). And here, Minn. Stat. § 268.035, subd. 20(13), and the caselaw interpreting it exclude relator from receiving benefits.

Affirmed.