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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1301**

Richard R. Bohmann,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed July 21, 2009
Affirmed
Collins, Judge***

Department of Employment and Economic Development
File No. 20231669-3

Richard R. Bohmann, N6488 Cemetery Road, Ladysmith, WI 54848 (pro se relator)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, 1st
National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101 (for
respondent department)

Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins,
Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the decision of the Department of Employment and Economic Development (DEED) to reduce his unemployment benefits, arguing that his pension payment is not deductible from his unemployment benefits because the pension-fund contribution is part of his bargained-for wage. We affirm.

DECISION

In December 2007, approximately ten months after appellant Richard Bohmann began receiving unemployment benefits, DEED issued a Determination of Ineligibility, stating that Bohmann's approximately \$305 weekly pension payment must be deducted from his unemployment benefits. Bohmann appealed DEED's decision, contending that the pension payment should not be deducted because it is part of a bargained-for wage that he earned earlier. Following a hearing, the unemployment law judge (ULJ) found that although the payments were a "bargained for aspect of his hourly compensation," the payments were nonetheless made by the base-period employer. The ULJ's order was affirmed on a subsequent request for reconsideration. On certiorari appeal, Bohmann asserts that the ULJ erred.

When reviewing the decision of a ULJ, we may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the applicant 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) (2006).

A person’s eligibility for unemployment benefits is a question of law. *Markel v. City of Circle Pines*, 479 N.W.2d 382, 384 (Minn. 1992). “When reviewing questions of law, this court is not bound by the [ULJ’s] conclusions of law, but is free to exercise its independent judgment.” *Id.* When reviewing the ULJ’s factual findings, we apply a deferential standard of review and view those findings in the light most favorable to the decision. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ’s factual findings will not be disturbed “when the evidence substantially sustains them.” *Id.* “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Id.* at 345.

Under Minnesota law, “[a]n applicant shall not be eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, [or] has received . . . payment, equal to or in excess of the applicant’s weekly unemployment benefit amount, in the form of: . . . pension . . . payments from any plan contributed to by a base period employer. . . .”¹ Minn. Stat. § 268.085, subd. 3(a)(3) (2006). A base-period employer contributes to the plan “if the contribution is excluded from the [statutory] definition of wages” *Id.* Wages are broadly defined to include

all compensation for services, including . . . ; severance payments; vacation and holiday pay; back pay . . . ; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness

¹ Payments that are less than an applicant’s weekly unemployment benefit apply to reduce the unemployment benefit amount. Minn. Stat. § 268.085 subd. 3(c) (2006).

and accident disability payments . . . ; and the cash value . . . of all compensation in any medium other than cash.

Minn. Stat. § 268.035, subd. 29 (2006). However, the definition of wages specifically excludes “the amount of any payment made to . . . an employee under a plan established by an employer that makes provision for employees generally . . . , including any amount paid by an employer for insurance or annuities, or into a plan, to provide for a payment, on account of (i) retirement” *Id.*, subd. 29(1).

Bohmann worked as a union brick layer for Steenderg-Watrut Construction, and included in his bargained-for compensation package was a pension-fund contribution that was paid by the employer to the union and was not subject to income-tax withholding. Although union contracts can dictate the classification of certain wages, the record before us is underdeveloped regarding the exact terms of the union contract. Moreover, Bohmann’s argument is belied by the fact that his application for unemployment benefits indicates that his last hourly wage was \$33.24—the equivalent of his base rate plus vacation and dues, but does not include pension contributions. Also, on the same application, Bohmann admitted that he would begin receiving a monthly \$1,321 pension payment in March 2007. Finally, the record indicates that the contribution made to the pension fund was made by the base-period employer, to a specified retirement fund, and was not subject to federal or state income tax. As such, this contribution fits squarely within the definition of a deductible pension payment for the purposes of unemployment compensation.

Affirmed.