

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2201**

Brett Schaffer,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed October 20, 2009
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 21219153-3

Brett Schaffer, 1829 140th Street, Burnsville, MN 55337 (pro se relator)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
Suite E200, First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-
1351 (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the determination that he committed fraud and must repay
unemployment benefits plus a penalty, arguing that he “did not intentionally
misrepresent” himself or commit fraud. Because relator acknowledges that his part-time

earnings exceeded the \$50 per week that he reported and because he failed to accurately report full-time employment and earnings, we affirm.

D E C I S I O N

This court may reverse or modify the decision of an unemployment law judge (ULJ) if the substantial rights of a petitioner may have been prejudiced because the findings, inferences, conclusions, or decision are unsupported by substantial evidence in the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(5) (2008).

Any applicant who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud.

Minn. Stat. § 268.18, subd. 2(a) (2008). On the determination that an applicant obtained unemployment benefits by fraud, the applicant must promptly repay the unemployment benefits and the commissioner “shall assess a penalty equal to 40 percent of the amount fraudulently obtained. This penalty is in addition to penalties under section 268.182.” *Id.*

Between June 17, 2007, and June 7, 2008, Schaffer filed requests for unemployment benefits for most weeks. Schaffer reported no work and no income for some weeks and for some weeks he reported \$50 in earnings. In reality, for the weeks he reported income, Schaffer had earnings in excess of \$200 and, for many weeks, he had full-time work. Based on his reported income, Schaffer received \$5,163 in unemployment benefits to which he was not entitled. The ULJ concluded that Schaffer obtained these benefits through fraud and that he must repay that amount plus a penalty

in the amount of \$1,585.20. On reconsideration, the ULJ affirmed the decision. This appeal by certiorari followed.

Schaffer does not dispute that he failed to report his actual earnings to respondent Department of Employment and Economic Development (DEED) and does not contest the determination that he must repay benefits to which he was not entitled. Schaffer asks this court to reverse the determination of the ULJ that he committed fraud and the imposition of a penalty, implicitly arguing that the record does not support the finding of the ULJ that he intentionally misreported income to obtain unemployment benefits.

Schaffer claims that he was following, to the best of his ability, the information contained in the *Minnesota Unemployment Insurance Information Handbook* and that he attended an “unemployment seminar” at the Minnesota Workforce Center where he was instructed to report any amount of earnings from part-time work as only being \$50. But the handbook Schaffer refers to states:

When you work (whether full time, part time or temporary), report your **gross earnings** (before deductions and taxes) when you request payment of benefits. Earnings include wages, tips, salary, commissions, cash payments, rent credit, goods, services, or any debt you perform work to repay.

Report your earnings in the week you performed the work, whether or not you have been paid. To figure your weekly gross earnings, take the number of hours you worked in a week (Sunday through Saturday) and multiply it by your hourly wage rate. If you worked for more than one employer in a week, combine your earnings from all employers.

(Emphasis added.)

The ULJ did not find Schaffer's explanation for failing to report his true part-time income credible, and Schaffer had no plausible explanation for failing to accurately report his income from full-time employment. We conclude that the ULJ's determination that Schaffer committed fraud is amply supported by evidence in the record.

Affirmed.