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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-482**

Michael Paul,
Relator,

vs.

Geco Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 17, 2009
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 21322906-3

Michael A. Paul, 3200 Pillsbury Avenue, Minneapolis, MN 55408 (pro se relator)

Geco Corp., 886 Jefferson Avenue, St. Paul, MN 55102 (respondent)

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

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Pro se relator Michael Paul challenges the decision of the unemployment-law judge (ULJ) affirming an earlier decision that relator failed to participate in his appeal from the Minnesota Department of Employment and Economic Development (DEED) determination that he is ineligible for unemployment benefits. Because we conclude that the ULJ did not abuse her discretion in finding that relator failed to demonstrate good cause for his failure to participate, we affirm.

FACTS

Relator appealed a determination that he was ineligible for unemployment benefits. He was sent a notification that the appeal hearing would take place on December 22, 2008, at 8:15 a.m. Because his hearing was to take place via telephone conference, the notification also included the telephone number the ULJ would call to reach relator. On the hearing date, relator failed to answer his telephone. Due to his failure to participate, the ULJ dismissed relator's appeal. Relator submitted a request for reconsideration, stating that he was at an emergency dentist appointment the morning of the hearing. He also stated that he had to use "any dentist [he] could find . . . to resolve [the] tooth pain before the holiday." The ULJ affirmed the dismissal, finding that relator did not demonstrate "good cause" for his failure to participate. The ULJ concluded that relator did not act with due diligence because a reasonable person would have answered the phone to explain the situation or contacted the department to report the emergency. This certiorari appeal follows.

DECISION

Relator challenges the ULJ's determination that he did not demonstrate good cause for his failure to participate in the hearing. On review, this court may affirm a ULJ's decision, remand it for further proceedings, or reverse or modify it

if the substantial rights of the petitioner may 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 the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2008). A ULJ's decision to deny a request for an additional evidentiary hearing will not be reversed absent an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

The ULJ may dismiss an appeal "if the appealing party fails to participate in the evidentiary hearing" and the ULJ makes a determination that the appealing party did not show good cause for failing to participate. Minn. Stat. § 268.105, subd. 1(d) (2008). The statute further instructs that a party who fails to participate "is considered to have failed to exhaust available administrative remedies." *Id.* But when a request for reconsideration is filed, a party who fails to participate "must be informed of the requirement" of establishing good cause for failing to participate. *Id.*, subd. 2(d) (2008). "Good cause" for purposes of this section is a "reason that would have prevented a

reasonable person acting with due diligence from participating at the evidentiary hearing.” *Id.*

In considering the request for a new hearing, the ULJ found that relator did not act with due diligence. Specifically, the ULJ concluded that relator should have answered his phone to explain the situation and request a new hearing. The ULJ also concluded that if relator was away from his telephone the morning of the hearing, he should have called the department to report the emergency prior to the hearing time. A reasonable person acting with due diligence would make an effort to notify the department of an emergency appointment. Based on the record before us, we conclude that the ULJ’s denial of the request for an additional hearing was not an abuse of discretion.

Affirmed.