STATE OF MINNESOTA
IN COURT OF APPEALS
A09-641, A09-1323

Betsy Killion,
Relator,

vs.

Betsy's Back Porch Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 18, 2010
Affirmed; motions denied
Minge, Judge

Department of Employment and Economic Development
File No. 21593569-3

William L. Killion, Faegre & Benson LLP, Minneapolis, MN (for relator)

Betsy's Back Porch Inc., Hopkins, MN (respondent employer)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic Development, St. Paul, MN (for respondent Department of Employment and Economic Development)

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

U N P U B L I S H E D O P I N I O N

MINGE, Judge

In these consolidated appeals from decisions by two unemployment law judges (ULJs), relator argues that (1) unemployment benefits should not be denied to her, as a business owner/employee under Minn. Stat. § 268.085, subd. 9 (2008), because her wages were only slightly below the minimum threshold of $7,500 for only one quarter out of the required 16; (2) the ULJ did not have jurisdiction to modify the determination-of-benefit account (DBA) from 26 weeks to 5 weeks because no one appealed the DBA issue to the ULJ and because there was no initial decision by DEED staff; (3) the ULJ violated constitutional and statutory rights to notice by only providing her an oral notice at a hearing that her eligibility for benefits under Minn. Stat. § 268.085, subd. 9, would be considered; and (4) the ULJ erred in ruling that relator could not change the effective date of her benefit account from December 2008 to January 2009 so that she would qualify for 26 weeks of maximum allowable benefits. We affirm.

FACTS

The facts in this case are not disputed. Relator Betsy Killion was the sole shareholder in Betsy's Back Porch Inc., a business principally serving coffee products. Relator elected coverage for herself for unemployment benefits and reported her wages to the Minnesota Department of Employment and Economic Development (DEED) for purposes of unemployment insurance.

In December 2008, relator closed the business and applied for unemployment benefits. On December 11, 2008, DEED issued a DBA showing that relator had a total of

$52,260 in wage credits and could collect a maximum of $13,052 in benefits. On December 18, DEED issued a determination of ineligibility (DOI) on the ground that the closure of relator's business "was not necessitated by the condition or circumstance of the business."

Relator appealed the December 18 DOI. On January 28, 2009, an evidentiary hearing was held before ULJ Christine Steffen. In her February 2 order, ULJ Steffen found that as a business owner, relator was forced to close due to lack of funds and determined that relator was eligible for benefits. Under Minn. Stat. § 268.085, subd. 9, which is a statutory provision specifically applicable to business owners, ULJ Steffen also determined that relator was entitled to only 5 weeks of benefits because she did not personally earn at least $7,500 in wages in each of the 16 calendar quarters prior to the effective date of her unemployment-benefit account. The short calendar quarter was the last quarter of 2004; relator had wages of $7,193.29, just $306.71 short.

On February 12, 2009, relator filed a request for reconsideration in which she argued, among other things, that the ULJ abused her discretion by failing to make a de minimis exception to the $7,500 requirement. In a March 11 order, ULJ Steffen affirmed the February 2 decision. On April 8, relator filed a certiorari appeal (A09-641) challenging ULJ Steffen's decision.

By March 2009, relator determined that she would be able to avoid the $306-shortfall problem associated with the last quarter of 2004 if she could instead include the last quarter of 2008 when her wages exceeded $7,500, but that she would need to file afresh for unemployment benefits to change her base period to accomplish this.

Consequently, in March 2009, relator attempted to withdraw her unemployment-benefit account and to reestablish a new benefit account as of January 2009. If relator had established her benefit account in January 2009, she would have been entitled to 26 weeks of benefits. On March 18, 2009, DEED issued a DOI stating that relator could not withdraw her account and file afresh.

Relator appealed the March 18 DOI. An evidentiary hearing was conducted before ULJ Jeffrey Blomquist, who affirmed the DOI, holding that relator was not able to withdraw her benefit account because she had already served her nonpayable waiting week.[1] Relator requested reconsideration. ULJ Blomquist affirmed and relator filed a certiorari appeal (A09-1323) challenging his decision.

On July 8, 2009, relator filed her brief in appeal A09-641 (from ULJ Steffen's decision). In her brief, relator made only one argument: that DEED is not absolutely bound by law to deny full unemployment benefits to a business owner just because the owner receives $300 less than $7,500 in personal wages in just one of the 16 quarters preceding the effective date of the benefit account. On August 10, 2009, DEED filed its respondent's brief.

On October 8, 2009, relator moved for leave to brief two additional issues involving ULJ Steffen's decisions in appeal A09-641: (1) whether relator's DBA maximum of $13,052 had become final as of December 31, 2008 (20 calendar days after DEED sent the determination) with the result that ULJ Steffen lacked jurisdiction to

[1] It is undisputed that by the time relator received the first order from ULJ Steffen on February 2, 2009, she had already served her nonpayable waiting week under Minn. Stat. § 268.085, subd. 1(5) (2008).

modify relator's benefit account; and (2) whether ULJ Steffen's modification of the benefit account without prior notice to her violated her constitutional right to due process and her right to a fair hearing under the Federal Unemployment Compensation Act, 42 U.S.C. § 503(a)(3) (2006).

DEED opposed relator's motion to brief additional issues. On October 20, relator filed a brief in appeal A09-1323 (from ULJ Blomquist) that addressed both that appeal and the additional issues relator sought to raise involving appeal A09-641. DEED filed a motion to strike the brief.

In an order filed on November 17, 2009, a special-term panel of this court granted relator's motion for leave to brief the additional issues and denied DEED's motion to strike relator's brief. The order refers the question of whether relator's new issues should be considered to this panel.

On December 15, DEED filed its respondent's brief in appeal A09-1323. The relator filed a reply brief on December 24. DEED moved to strike relator's reply brief on three grounds: (1) this court's November 17 special-term order did not authorize relator to file a reply brief addressing DEED's response to the supplemental issues; (2) relator raised a new issue in the reply brief; and (3) relator's improper arguments in the reply brief relating to appeal A09-641 were so intermingled with relator's arguments regarding appeal A09-1323 that proper and improper arguments could not be separated. Relator disputes DEED's contention. The motion to strike relator's reply brief is before this panel.

D E C I S I O N

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced and may alter the decision if, among other reasons, the decision violates the constitution, exceeds the ULJ's jurisdiction, is made upon unlawful procedure, or is affected by an "error of law." Minn. Stat. § 268.105, subd. 7(d) (2008); *Jaskowiak v. CM Constr. Co.*, 717 N.W.2d 448, 450 (Minn. App. 2006), *review granted and remanded* (Minn. Sep. 14, 2006).

I.

The first issue is whether ULJ Steffen erred in interpreting Minn. Stat. § 268.085, subd. 9, as limiting relator to 5 weeks of unemployment benefits because she did not personally earn at least $7,500 in wages in each of the 16 calendar quarters prior to the effective date of her unemployment-benefits account. The interpretation of a statute is a question of law that we review de novo. *Reider v. Anoka-Hennepin Sch. Dist. No. 11*, 728 N.W.2d 246, 249 (Minn. 2007). A determination, based on uncontested facts, that an employee is ineligible for unemployment benefits is also a question of law subject to de novo review. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

Section 268.085 sets forth the eligibility requirements for receiving unemployment benefits. Subdivision 9, among other things, limits the eligibility of applicants who are employed by the business they own:

> Wage credits from an employer may not be used for unemployment benefit purposes by any applicant who:

> (1) individually [or] jointly . . . owns or controls directly or indirectly 25 percent or more interest in the employer.
>
> . . . .
>
> This subdivision is effective when the applicant has been paid five times the applicant's weekly unemployment benefit amount in the current benefit year. *This subdivision does not apply if the applicant had wages paid of $7,500 or more from the employer covered by this subdivision in each of the 16 calendar quarters prior to the effective date of the benefit account*.

Minn. Stat. § 268.085, subd. 9 (emphasis added).

Here, the ULJ interpreted the foregoing language as requiring relator to have received wages of $7,500 in every one of the 16 calendar quarters preceding the effective date of her benefit account in order for relator to be eligible to receive 26 weeks of benefits instead of 5. Relator argues that this court should treat her small, $300 shortfall in one quarter as de minimis and grant her 26 weeks of benefits. She argues that the legislature intended to cover business owners, who, like her, "have a history of earning appreciable wages over a long period of time."

This court held that subdivision 9 unambiguously means that an applicant must be paid $7,500 or more in every one of the 16 calendar quarters to be eligible for 26 weeks of benefits. *Soderquist v. Dep't of Employment & Econ. Dev.*, 774 N.W.2d 729, 732 (Minn. App. 2009) (limiting an applicant to 5 weeks of benefits when the applicant fell short of $7,500 in only one calendar quarter out of the 16, that shortfall being $576.90). Because the statute is unambiguous, and does not contain a de minimis exception,

relator's arguments fail and ULJ Steffen did not err by determining that the earnings requirement limits relator to five weeks of benefits.

II.

The next issue is whether ULJ Steffen had the jurisdiction to limit relator's benefits to five weeks. Relator argues that: (1) this limitation by the ULJ modified DEED's December 11, 2008 DBA, and the ULJ did not have the power to modify this DBA because it became final when not appealed within 20 days under Minn. Stat. § 268.085, subd. 3a(a) (2008); and (2) there was no initial DEED staff decision that the ULJ could hear on appeal.

Subject-matter jurisdiction is the power of an adjudicator to hear and decide the case brought before it. *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). Jurisdiction to consider unemployment-benefit appeals is exclusively established by Minnesota Statutes chapter 268. *See Christgau v. Fine*, 223 Minn. 452, 455, 27 N.W.2d 193, 195 (1947) (noting that jurisdiction hinges upon the construction of statutes). There is no equitable or common-law entitlement to benefits. Minn. Stat. § 268.069, subd. 3 (2008). "[W]hether subject-matter jurisdiction exists is reviewed de novo." *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. App. 2006.) The interpretation of a statute is a question of law that we review de novo. *Reider*, 728 N.W.2d at 249.

Because relator did not raise any of these jurisdiction arguments before ULJ Steffen or in her principal brief in appeal A09-641, a threshold issue is whether relator waived these arguments. Generally, matters not raised below will not be considered on

appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider issues not presented or decided by the district court). This waiver rule, however, is not absolute. One exception involves a challenge to an agency's subject-matter jurisdiction. The lack of subject-matter jurisdiction may be raised at any time, including for the first time on appeal. *Cochrane*, 529 N.W.2d at 432.

A. *Time for Appeal to ULJ – DBA versus DOI*

Relator's argument over subject-matter jurisdiction requires a determination of the actual subject or character of the ULJ's decision. Relator's argument is based on the premise that ULJ Steffen improperly decided an issue relating to the DBA when she determined that relator was limited to 5 weeks of benefits instead of 26. DEED counters that ULJ Steffen did not act improperly because the limitation to five weeks is not a DBA, but rather a determination of *ineligibility* (DOI). DEED asserts that these determinations are made under separate statutes (a DBA under section 268.07 and a DOI under section 268.101) and that these are separate and distinct determinations for appeal purposes. Minn. Stat. §§ 268.07, subd. 3a(a) (2008); .101, subd. 2(f) (2008). Here, ULJ Steffen limited relator to five weeks of benefits by applying Minn. Stat. § 268.085, subd. 9. Thus, the question becomes whether the ULJ's decision under subdivision 9 was a DBA (i.e., it affected relator's benefit account) or whether it was a DOI (i.e., it affected her eligibility).

"Minn. Stat. § 268.085 (2008) sets forth the *eligibility* requirements for receiving unemployment benefits and subdivision 9 limits the *eligibility* of [certain] applicants . . . ." *Soderquist*, 774 N.W.2d at 731 (emphasis added). In *Soderquist*, this

court applied subdivision 9 to limit the applicant's eligibility for unemployment benefits. *Id*. at 732. Interpreting subdivision 9 as limiting eligibility is consistent with Minn. Stat. § 268.069, subd. 1(3) (2008), which requires the commissioner to pay benefits to applicants who, among other things, "ha[ve] met all of the ongoing *eligibility* requirements under section 268.085." (Emphasis added.)[2]

Thus, the ULJ did not modify relator's DBA. The DBA identifies the employee's maximum draw against the unemployment trust fund, assuming no eligibility issues. Minn. Stat. § 268.07, subd. 1(b) (2008). Based on the statutory language and the different functions of the DBA and DOI, we conclude that the December 11 DBA was not modified by ULJ Steffen and that ULJ Steffen had subject-matter jurisdiction to make a DOI that limited relator's eligibility for benefits to five weeks.

B. *Lack of Prior DEED Staff Decision*

Relator also argues that the ULJ did not have jurisdiction to consider this subdivision 9 issue because there was no initial determination of this issue by DEED staff

[2] Minn. Stat. § 268.101 is also helpful in analyzing this question. That section requires that an applicant provide all information necessary to determine the applicant's eligibility for benefits in the unemployment-benefits application. Minn. Stat. § 268.101, subd. 1(a). The application asks the following question: "In the last 18 months have you worked for a business you or a family member owned or partially owned." Based on information from the application, DEED then must "determine any issue of ineligibility raised." *Id*., subd. 2(a). "An issue of ineligibility . . . includes any question regarding the denial or allowing of unemployment benefits under this chapter except for issues under section 268.07." *Id*., subd. 2(g). Because the issue of whether relator is denied benefits after five weeks arises under subdivision 9 of section 268.085—not under section 268.07—it follows that this is an issue of eligibility. DEED's informational material provided to applicants buttresses this conclusion: "Minnesota Statues Section 268.085, subdivision 9, describes an applicant's eligibility for unemployment benefits when the applicant is laid off from a company that he or she owns or controls."

that could be appealed to the ULJ. The premise of this argument is that the ULJ can only hear and decide issues on appeal; in other words, that the ULJ cannot determine issues that have not already been initially decided. *See* Minn. Stat. §§ 268.07, subd. 3a (authorizing a ULJ to hear and decide appeals of a DBA); .101, subd. 2(f) (authorizing a ULJ to hear and decide appeals of a DOI), .105, subd. 1 (2008) (authorizing a ULJ to hear and decide issues on appeal). DEED counters that Minn. Stat. § 268.101, subd. 3a, labeled "Direct Hearing," allows a ULJ to determine issues even when there has not been an initial decision to appeal from. That subdivision provides:

> Regardless of any provision of the Minnesota Unemployment Insurance Law . . . an unemployment law judge may, before a determination being made under this chapter, refer any issue of ineligibility, or any other issue under this chapter, directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue is the same as if a determination had been made and an appeal filed.

Minn. Stat. § 268.101, subd. 3a. Relator argues that the clause "before a determination being made under this chapter" means that subdivision 3a only authorizes a ULJ to hear an issue *before* DEED staff has made *any* determinations whatsoever. Under this interpretation of the clause, ULJ Steffen would not have had jurisdiction to consider the subdivision 9 issue because DEED had made an initial DBA before ULJ Steffen considered the subdivision 9 issue. But DEED interprets subdivision 3a as authorizing a ULJ to hear a specific issue before DEED staff has made a determination of *that* specific issue, regardless of decisions on other issues.

Because the *before* clause in subdivision 3a can be interpreted either way, the statute is ambiguous and we employ canons of construction. *See* Minn. Stat. §645.16

(2008) (providing that nonexplicit statutory language calls for interpretive methods). One statutory canon provides that in ascertaining legislative intent, it is presumed that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17 (2008). When an applicant applies for unemployment benefits, a DBA happens first and then other issues, such as a DOI, are resolved. *See* Minn. Stat. § 268.069, subd. 1 (listing a DBA as the first hurdle an applicant must overcome in obtaining benefits). Relator's interpretation of the *before* clause dramatically limits the subdivision to those situations where no DBA or other staff determination has yet occurred. DEED's interpretation gives Minn. Stat. § 268.101, subd. 3a, a more useful meaning. DEED's interpretation allows the commissioner or a ULJ to raise an issue for hearing even if there has been an initial DBA or other determination by staff.

We conclude that subdivision 3a grants the ULJ jurisdiction to hear and decide this five-week DOI issue under Minn. Stat. § 268.085, subd. 9, even though DEED staff had already made a DBA, but a staff DOI had not been made.

III.

The third issue raised by relator is adequacy of notice. Relator argues that ULJ Steffen fundamentally erred because relator had initiated the appeal to the ULJ, because the only issue was whether she had quit, and because ULJ Steffen sua sponte addressed her eligibility for benefits under subdivision 9 without providing relator notice prior to the hearing.

A. *Waiver*

Courts review de novo whether an agency decision violated due-process rights. *In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 875 (Minn. App. 2007). The interpretation of a statute is a question of law that we review de novo. *Reider*, 728 N.W.2d at 249.

Because relator did not raise any of these notice arguments before ULJ Steffen or in her principal brief in appeal A09-641, DEED argues that relator waived these arguments and moves that we not consider the issue. Generally, matters not raised below will not be considered on appeal. *See Thiele*, 425 N.W.2d at 582 (declining to consider issues not presented or decided by the district court). Courts require even pro se parties to define the arguments of the case to the lower tribunal. *See Johnson v. Jensen*, 446 N.W.2d 664, 665 (Minn. 1989) ("As a general rule, litigants are bound on appeal by the theory or theories . . . upon which the case was actually tried."); *Gruenhagen v. Larson*, 310 Minn. 454, 457-58, 246 N.W.2d 565, 568-69 (1976) (binding a civil litigant to the issues raised below despite pro se status).[3] The general rule regarding briefing is that an argument is deemed waived if a party fails to address it in the initial brief. *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn.

[3] The administrative-law rule of exhaustion mirrors this caselaw policy by preventing the court from granting relief if the agency has not had the opportunity to fully address a grievance. *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 71 (Minn. 1984) ("As a general rule a party . . . must first exhaust administrative remedies available before bringing an action for judicial relief . . . .") This rule safeguards agency autonomy, furthers judicial efficiency, and furnishes an adequate record and analysis to review on appeal. *Stephens v. Bd. of Regents of Univ. of Minn.*, 614 N.W.2d 764, 773-74 (Minn. App. 2006), *review denied* (Minn. Sept. 26, 2000).

1982). An argument that is not briefed in a principal brief cannot be raised in a reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

These waiver rules, however, are not absolute. An appellate court may base its decision on a theory not presented to or considered by the district court where the question raised for the first time on appeal is plainly decisive of the entire controversy on its merits, and where, as in cases involving undisputed facts, there is no possible advantage or disadvantage to either party in not having a prior ruling by the district court on the question. *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997). Factors favoring review include whether the issue (1) is a legal issue of first impression; (2) was raised prominently in briefing; (3) was implicit in or closely akin to the arguments made below; and (4) is not dependent on any newly asserted or controverted facts. *Id.* at 688.

Here, relator's notice issue is novel. It does not involve controverted facts, or facts outside the record, and has been fully briefed. But the notice issues raised on appeal are not closely akin to the arguments relator made to the ULJs. This court has exercised its discretion to consider the adequacy of notice in the context of an unemployment-benefits appeal. *Jaskowiak*, 717 N.W.2d at 450-51. *Jaskowiak* involved the adequacy of the notice provided to an applicant in the request for reconsideration under Minn. Stat. § 268.105, subd. 2(d) (Supp. 2005). *Id.* Not only was the notice issue not considered by the *Jaskowiak* ULJ, but the parties did not even brief the issue on appeal. *Id.* at 450. We both considered the notice issue and reversed based on failure of notice. *Id.* at 451.

Here, the parties briefed the notice issues. Based on this precedent and because three of the four factors favor review, we reach the notice issues.[4]

B. *Notice Under Minnesota Statutes/Rules*

In her final reply brief, relator claims that ULJ Steffen violated the statutory notice requirements by not properly informing her that the hearing would consider a new issue—whether her benefits should be limited to five weeks. "When a statute provides the manner, form, and time of notice, the notice must conform to the prescribed provisions." *Jaskowiak*, 717 N.W.2d at 451 (quotation omitted). Whether the ULJ's oral notice complies with the strictures of subdivision 1(a) is a question of law we review de novo. *Id*.

The statute provides as follows:

> Upon a timely appeal having been filed, the department must send, by mail or electronic transmission, a notice of appeal to all involved parties that an appeal has been filed, that a de novo due process evidentiary hearing will be scheduled, and that the parties have certain rights and responsibilities regarding the hearing. The department must set a time and place for a de novo due process evidentiary hearing and send notice to any involved applicant and any involved employer, by mail or electronic transmission, not less than ten calendar days before the date of the hearing.

[4] This conclusion leads us to deny DEED's motion to strike relator's reply brief on the grounds

Minn. Stat. § 268.105, subd. 1(a) (2008).[5] However, we note that by its terms, this subdivision deals with notice of the time and place of the hearing and "certain rights and responsibilities" but does not deal with the new-issue problem raised by relator.

The procedure for raising new issues in an unemployment-benefits hearing is addressed by DEED regulation:

> The notice must state . . . the issues to be considered at the hearing. . . . [But upon motion of the ULJ or a party, the ULJ] may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified on the record at the hearing and does not object on the record.

Minn. R. 3310.2910 (2008).

It is undisputed that relator was not given pre-hearing written notice that the ULJ would be addressing the 26- versus 5-week eligibility question under Minn. Stat. § 268.085, subd. 9. But the record is clear that the ULJ stated on the record numerous times that the hearing was being expanded to address this earnings/eligibility issue. This is effectively a motion and constitutes notice on the record. The ULJ then took testimony and received exhibits on earnings as it affected eligibility. Relator did not object to the ULJ considering this issue. When the ULJ received earnings records as exhibits, the ULJ specifically noted that these exhibits addressed the issue of whether relator met the income requirements necessary to receive 26 weeks of benefits under subdivision 9. The ULJ then asked relator if she had any objections to having these exhibits accepted into

[5] Relator uses the 2009 statutory language in her arguments. This language stems from 2009 Minn. Laws ch. 78, art. 4, § 34. This section is effective August 2, 2009, and applies to all DEED determinations and ULJ decisions issued on or after that date. 2009 Minn. Laws ch. 78, art. 4, § 52. Because all DEED determinations and ULJ decisions in this case were before August 2, 2009, the 2008 language governs.

the record and relator said she did not. There is no claim that any of the wage data that the ULJ obtained is inaccurate; that the ULJ proceeded in less than a patient, even-handed fashion; or that relator could have acted to avoid a five-week limit on her benefits given the timing of the ULJ's decision.[6] Based on this record, we conclude that the ULJ did not violate relator's state-law rights to notice.

C. *Notice Under this Constitution*

Unemployment benefits are an entitlement protected by the constitutional guarantee of procedural due process. *Schulte v. Transportation Unlimited, Inc.*, 354 N.W.2d 830, 832 (Minn. 1984). The question is whether the process that relator received is adequate. *Id.*

Three factors decide whether due process is met in this situation:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional . . . procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

---

[6] Relator argues that ULJ Steffen's explanation of subdivision 9 at times implied that the 16 prior quarters in which relator needed to earn at least $7,500 in wages just went back to the first quarter of 2005 rather than the last quarter of 2004. This is true. But it is also true that ULJ Steffen stated correctly that the relevant 16 quarters were the quarters prior to the effective date of relator's unemployment-benefit account. And the ULJ stated that the tax records that relator provided would be verified against the tax records DEED had on file.

Moreover, these arguments by relator miss the point. ULJ Steffen told relator that she would consider the subdivision 9 issue and relator did not object. The ULJ used accurate wages of relator from the correct calendar quarters and correctly decided relator's eligibility for benefits under subdivision 9 given relator's effective date of benefit account of December 2008.

Schulte, 354 N.W.2d at 833 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S. Ct. 893, 902-03 (1976)). "Notice and an opportunity to be heard are universally recognized as essential to due process." *Juster Bros., Inc. v. Christgau*, 214 Minn. 108, 119, 7 N.W.2d 501, 508 (1943). The official action at issue here is the ULJ's determination of relator's eligibility for unemployment benefits under subdivision 9. The private interest that will be affected is relator's eligibility for unemployment benefits, which is a significant interest.

Here, relator was present at the hearing and had an opportunity to ask questions, give testimony, offer evidence, and make objections. In short, relator had an opportunity to be heard. Moreover, the determination under subdivision 9 is based strictly on past wage data, which is verifiable. This further reduces the risk that relator would erroneously be deprived of unemployment benefits. And relator not only had a right to the first hearing, but a right to request reconsideration and submit further arguments to the ULJ in favor of reconsideration. Minn. Stat. § 268.105, subd. 2 (2008). If the ULJ had to provide relator with prior written notice that subdivision 9 would be addressed, the probable value of this additional safeguard seems low: the determination would still be made based on the same reported wages, which would not have changed. Finally, as DEED notes in its brief, the government has an interest in preserving resources and streamlining the unemployment-benefits process by hearing both issues of ineligibility—a quit determination and subdivision 9—together. *See Worthington Tractor Salvage, Inc. v. Miller*, 346 N.W.2d 168, 173 (Minn. App. 1984) ("In view of the department's workload, it is imprudent for it to overlook the eligibility issue and thereby require two

separate evidentiary hearings to resolve the issues raised by relator."). Weighing the three factors described in *Schulte*, we conclude that the hearing before the ULJ did not violate relator's constitutional right to due process.

D. *NOTICE UNDER FEDERAL LAW*

Relator also argues that the notice deficiency violated her right to a fair hearing under federal statutes. Section 303(a) of the Social Security Act provides that the federal government will not provide money to a state to help defray the costs of administering its unemployment-benefits program unless the state law mandates an "[o]pportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. § 503(a)(3). Aggrieved individuals can bring a cause of action to enforce this statutory fair-hearing requirement through injunction. *Jenkins v. Bowling*, 691 F.2d 1225, 1228, 1233-34 (7th Cir. 1982). This requirement is coextensive with due process protections. *Ross v. Horn*, 598 F.2d 1312, 1318 n. 4 (3d Cir. 1979); *Camacho v. Bowling*, 562 F. Supp. 1012, 1020 (N.D. Ill. 1983). Because the notice did not violate due process, we conclude relator's claim under section 303(a) is not meritorious.

IV.

The next issue is whether ULJ Blomquist erred in deciding that because relator had already served her nonpayable waiting week, she could not withdraw her benefit account. The interpretation of a statute is a question of law that is reviewed de novo. *Reider*, 728 N.W.2d at 249. If the language of a statute is plain and unambiguous, then courts must interpret the statute as written without applying other principles of statutory

construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004); Minn. Stat. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

Relator established her unemployment-benefit account in December 2008. If relator had established her benefit account in January 2009 instead, she would have had 16 quarters of wages above $7,500 and would be eligible for 26 weeks of benefits under Minn. Stat. § 268.085, subd. 9, rather than 5 weeks. Starting in March 2009, relator sought to withdraw her initial benefit-account application and refile effective January 2009.

The effective date of the benefit account is the Sunday of the calendar week that the application was filed. Minn. Stat. § 268.07, subd. 3b(a), (b) (2008). Once a benefit account is established, it may only be withdrawn if, among other things, "the applicant has *not* served the nonpayable waiting week under section 268.085, subdivision 1, clause (5)." *Id*., subd. 3b(c)(2) (emphasis added).

Relator attempted to withdraw her benefit account in March 2009. It is undisputed that relator served her waiting week in January 2009. Under the clear language of Minn. Stat. § 268.07, subd. 3b(c)(2), relator could not withdraw her benefit account because she has already served her waiting week. ULJ Blomquist did not err in determining that relator could not withdraw her benefit account.

V.

The next issue is whether the DEED commissioner acted arbitrarily and capriciously in not amending relator's account date. To prove an agency acted arbitrarily and capriciously, the claimant must demonstrate that the decision relied on improper factors, ignored important issues, ran counter to the evidence, or was highly implausible. *In re Charges of Unprofessional Conduct Contained in Panel File 98-26*, 597 N.W.2d 563, 567 (Minn. 1999).

Relator argues that even if she may not be able to withdraw her benefit account, the commissioner should withdraw and reestablish her benefit account to make it effective beginning January 2009 so that she could qualify for additional unemployment benefits. Relator argues that the commissioner has this power under Minn. Stat. § 268.07, subd. 1(d), which provides:

> The commissioner may, at any time within 24 months from the establishment of a benefit account, reconsider any *determination of benefit account* and make an amended determination if the commissioner finds that the determination was incorrect for any reason.

(Emphasis added.)

At the outset, relator's argument that the commissioner should withdraw and reestablish relator's benefit account requires that we determine that the commissioner has the power to do so. The statute authorizes the commissioner to change the determination of benefit account (DBA), not the establishment of a benefit account. The two steps are different. The establishment is provided for in Minn. Stat. § 268.07, subd. 2. *See* Minn. Stat. § 268.07, subd. 3b(b) ("A benefit account established under subdivision 2 . . . .").

The determination of benefit account is established under Minn. Stat. § 268.07, subd. 1(b).

Even if we accepted relator's argument that the commissioner has the power to alter her benefit account, the commissioner must first find an error and even then, the commissioner has discretion in deciding whether to act: "The commissioner *may* . . . reconsider any determination of benefit account *if the commissioner finds that the determination was incorrect*." *Id.*, subd. 1(d) (emphasis added). In this case, based on the timing of relator's application for benefits, DEED correctly calculated the account date, base period, and a $13,052 maximum benefit amount. There was no "error" for the commissioner to fix under Minn. Stat. § 268.07, subd. 1(b). Moreover, even if we could point to an "error," the commissioner's decision not to act would have to be arbitrary and capricious. *See Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 166 (Minn. App. 2009) (affording judicial deference to agency when statute grants discretion to administrative officers). Finally, relator never even alleges that she has a constitutional or equitable right to withdraw and refile her benefit account to maximize her potential benefits. The unemployment-benefit system is a statutorily created system; there is no equitable or common-law right to benefits. Minn. Stat. § 268.069, subd. 3.

For all these reasons, even if Minn. Stat. § 268.07, subd. 1(d) were applicable, we conclude the commissioner did not act arbitrarily and capriciously in not amending the effective date of relator's benefit account.

VI.

The final issue is whether DEED's handling of relator's application for benefits violated its obligations to her. The interpretation of a statute is a question of law that we review de novo. *Reider*, 728 N.W.2d at 249.

A ULJ must conduct a hearing as an "evidence gathering inquiry"—rather than "an adversarial proceeding"—and ensure that the relevant facts are developed. *See* Minn. Stat. § 268.105, subd. 1(b). The ULJ "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2008); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). Furthermore, the ULJ "should assist unrepresented parties in the presentation of the evidence." Minn. R. 3310.2921.

Relator argues that both ULJs violated their obligations to assist her in the presentation of her case. Specifically, she argues that the ULJs should have informed her that (1) by filing her application in December 2008 rather than January 2009, she would only qualify for five weeks of benefits; and (2) she could withdraw her application before she served her nonpayable waiting week, refile in January, and thus be eligible for maximum benefits.[7] In essence, relator argues that the ULJs had an obligation to

[7] It is noteworthy that if relator had found employment in January of 2009, she would have had collected five weeks of benefits. Had she withdrawn her initial application, refiled in January, and found work in February; she may not have collected even 5 weeks of benefits, to say nothing of 26. Thus, the advantage of qualifying for 26 versus 5 weeks of benefits depended on not finding employment, something neither relator nor the ULJ could fully predict.

determine how relator might maximize her benefits and give her tactical advice on how to accomplish this during the course of a hearing.

The duty of a ULJ is to conduct the hearing in a fair manner and ensure that benefits are accurately determined based on the law and facts. Here, both ULJs complied with their responsibilities. The first ULJ (Steffen) told relator that she would consider the subdivision 9 issue and explained why. Relator did not object, but fully participated in the effort. We conclude that ULJ Steffen complied with the procedure for raising a new issue in the hearing. *See* Minn. R. 3310.2910. She asked relator neutral, nonaccusatory questions as she obtained relevant information. She explained exhibits to relator and asked her if she objected to them being received into the record. The ULJ appropriately conducted the hearing as an "evidence gathering inquiry" that developed the relevant facts rather than "an adversarial proceeding." It is undisputed that the ULJ used accurate wages of relator from the correct calendar quarters in making this decision and correctly decided relator's eligibility for benefits under subdivision 9 given relator's effective date of benefit account of December 2008. We conclude that ULJ Steffen satisfied her duty under Minn. Stat. § 268.105, subd. 1(b).

In March 2008, the second ULJ (Blomquist) also correctly applied the plain meaning of the relevant statute to determine that relator could not withdraw her benefit

account because she had already served her waiting week at least a month earlier. We conclude that ULJ Blomquist satisfied his duty under the law.

Affirmed; motions denied.[8]

Dated:

[8] Based on our affirmance, it is unnecessary to reach the portions of DEED's arguments that may remain in DEED's motion to strike relator's reply brief.