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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1318**

Steven Wieczorek,  
Relator,

vs.

CSK Auto Inc.,  
Respondent,

Department of Employment and  
Economic Development,  
Respondent.

**Filed June 22, 2010  
Affirmed  
Hudson, Judge**

Department of Employment and  
Economic Development  
File No. 21765312-3

Steven J. Wieczorek, Circle Pines, Minnesota (pro se relator)

CSK Auto Inc., c/o TALX Employer Servs., LLC, Phoenix, Arizona (respondent employer)

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

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Hudson, Judge.

## **UNPUBLISHED OPINION**

**HUDSON, Judge**

Relator challenges the determination that he fraudulently obtained unemployment benefits. The unemployment law judge (ULJ) found that because relator failed to disclose his earnings from part-time employment, he committed fraud. Because the ULJ did not err in that determination, we affirm.

### **FACTS**

Relator Steven Wieczorek established an unemployment-benefits account and applied for benefits in December 2006 after he was permanently laid off from his full-time position with Aerotek. Benefits were exhausted in June 2007. Relator has also worked at CSK Auto, Inc., since August 2004. While employed by Aerotek and during his layoff, relator continued to work part-time hours at CSK. Relator continued to work at CSK after his benefits expired and is now employed full-time at that company.

In January 2009, the Minnesota Department of Employment and Economic Development (DEED) issued an ineligibility determination to relator stating that his benefits should have been reduced because he was working part-time during the unemployment period from December 2006 to June 2007. DEED confirmed that relator had worked while receiving benefits and had not reported the income to DEED, and that his weekly benefit amount was, therefore, greater than it should have been. The determination noted an overpayment of \$2,139. DEED also issued a fraud determination, finding that relator had obtained the overpayment by misrepresentation, misstatement, or failing to disclose a material fact. This resulted in a fraud penalty of \$855.60.

Relator challenged the fraud determination. Relator testified that when he established his benefit account, he asked an employee at the Blaine Workforce Center whether his part-time job would affect his unemployment benefits. Relator testified that the Workforce Center employee told him that his unemployment claim would be based only on his full-time job and that his part-time job would not affect his claim. Relator testified that, as a result of that conversation, he believed that he did not have to report his income from his part-time job. The ULJ determined that relator failed to report his earnings or disclose the fact that he was working each week while receiving unemployment benefits and that he obtained overpayment of benefits because of fraud as defined in the unemployment-law statute. Relator filed a request for reconsideration, and the ULJ affirmed. This appeal follows.

## **D E C I S I O N**

Relator alleges that the ULJ erred in determining that he fraudulently obtained unemployment benefits. This court may affirm, or it may reverse, remand, or modify the decision of a ULJ if the substantial rights of the litigant may have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008); *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). Whether the applicant knowingly failed to disclose material facts while requesting benefits involves the credibility of the applicant's testimony. *Burnevik v. Dep't of Econ. Sec.*, 367 N.W.2d 681, 683 (Minn. App. 1985); *Cash v. Comm'r of Econ. Sec.*, 352 N.W.2d 535, 537 (Minn. App. 1984). "Credibility determinations are the exclusive

province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2008).

An “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). If it is determined 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.” *Id.*

Here, relator acknowledges that he failed to disclose his employment status and income while receiving unemployment benefits. Each week during his unemployment period, relator was required to report his earnings, and each week relator reported none. Relator argues that although he falsely reported that he was not working or earning any wages, he did so in good faith. The ULJ found that “[e]ven if [relator] believed his benefits would not be affected by his part-time job, he should have disclosed his earnings when asked if he performed any work. [Relator] failed to disclose his earnings from his part-time position when specifically asked if he performed any work, and, therefore, he committed fraud.”

It is possible that relator believed that the questions asking whether he was working related only to the job that he was laid off from and that he believed he was therefore correctly answering simply that he was not working at that job. But whether relator believed in good faith that the information he was reporting was accurate is a credibility matter for the ULJ. The ULJ made a credibility determination and explained the reasons for her decision. Substantial evidence supports that determination. Relator repeatedly reported that he was not working although he was employed part-time at another company. Even if he believed that his part-time job would not affect his claim, he falsely reported that he was not earning income while receiving benefits. The ULJ did not err in determining that such statements could not have been made with a good-faith belief as to their correctness.

**Affirmed.**