

This opinion will be unpublished and may not be cited except as provided by Minn.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
A09-1283**

Joshua Callington,
Relator,

vs.

Department of Employment and
Economic Development,
Respondent.

**Filed April 20, 2010
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development
File No. 21898826-2

Joshua Callington, Minneapolis, Minnesota (pro se relator)

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

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that he received the maximum amount of federal emergency unemployment compensation to which he was eligible, arguing that letters he received from respondent Minnesota

Department of Employment and Economic Development (DEED) indicated that he was entitled to additional unemployment-compensation benefits. Because the ULJ did not err in interpreting the law governing relator's eligibility for benefits, and because relator received the correct amount of benefits, we affirm.

FACTS

Relator Joshua Callington established an unemployment-compensation benefits account with DEED on May 4, 2008. His weekly benefit under that account was \$302, and his maximum benefit amount was \$4,142. Callington received his maximum benefit amount and exhausted his account the week ending August 16, 2008.

In June 2008, Congress passed the Supplemental Appropriations Act of 2008, which allowed benefit applicants who had exhausted their accounts to receive extended, first-tier benefits up to the lesser of 50 percent of their original benefit amount or 13 times their average weekly benefit amount. Pub. L. No. 110-252, § 4002(b)(1)(A)-(B), 122 Stat. 2323, 2354-55 (2008); *see also* Minn. Stat. § 268.115, subd. 7 (2008) (implementing the Federal-State Extended Unemployment Compensation Act of 1970). DEED determined that under this June legislation, Callington was eligible for additional benefits in the maximum amount of \$2,071, which is 50 percent of his original benefit amount of \$4,142. Callington collected these benefits from August 17, 2008 through the week ending October 4, 2008, when his account was exhausted.

In November 2008, Congress passed a further extension of benefits, the Unemployment Compensation Extension Act of 2008. Pub. L. No. 110-449, 122 Stat. 5014 (2008). This November legislation amended the earlier provision of first-tier

benefits by providing that applicants could obtain the lesser of 80 percent of their original accounts (an increase from the earlier 50 percent) or 20 times their weekly benefit amount (an increase from the earlier 13 times). *Id.* § 2. DEED calculated that under the November legislation, Callington was eligible for an additional 30 percent of his original benefit amount, or \$1,242, which was added to his previous, first-tier benefit amount of \$2,071, for a total of \$3,313 of first-tier benefits. Callington received this additional \$1,242 benefit amount during the weeks of November 23, 2008 through December 27, 2008, when his account was exhausted.

In late 2008, Callington received two letters from DEED. The first letter, dated November 26, 2008, stated that Congress had passed legislation that increased the amount of emergency unemployment-compensation benefits, effective November 23, 2008, and that this legislation would add up to 20 additional weeks of benefits for applicants. The second letter, dated December 2, 2008, also stated that Congress had passed legislation providing additional benefits. This letter informed Callington that he was receiving notice because (1) he had established an account before November 23, 2008; and (2) the account was not yet exhausted, although if the account had recently exhausted, he was still entitled to the benefits. The letter stated that “the balance on [Callington’s] account has increased from 50% of [his] most recent regular [unemployment-insurance] account to 80%.” Neither letter specified an amount of additional benefits to which Callington was entitled.

DEED determined that Callington was entitled to receive only \$1,242 of additional benefits, which was an additional 30 percent of his maximum original benefit amount,

under the November extension of first-tier benefits. He challenged this determination, arguing that because the two letters together informed him that he was entitled to (a) additional unemployment benefits, and (b) benefits up to 80 percent of his maximum original benefit amount, he was entitled to receive the full additional amount of \$3,313, which was 80 percent of his maximum benefit amount, for a period beginning in November 2008. He therefore requested that DEED credit his account with an additional amount of approximately \$2,070.

A hearing was held before a ULJ, who determined that Callington was entitled to an expansion of the first extension of benefits, which began on August 17, 2008. This expansion increased his total benefit amount to 80 percent of his standard unemployment-benefit account for the period from August 17, 2008 through December 27, 2008. The ULJ found that Callington had collected the total amount of 80 percent of his benefits for that period and that he received all of the benefits to which he was entitled under the November 2008 expansion. Callington filed a request for reconsideration, which was denied. This certiorari appeal follows.

D E C I S I O N

This court reviews the decision of a ULJ to determine whether the petitioner's substantial rights have been prejudiced because of, among other reasons, an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). "The interpretation of a statute on undisputed facts is a question of law subject to de novo review." *Soderquist v. Universal Servs. Telecom Tech Inc.*, 774 N.W.2d 729, 731 (Minn. App. 2009).

If a statute is unambiguous, this court on review “applies the words [in the statute] according to their plain meaning and engages in no further construction.” *Scheeler v. Sartell Water Controls, Inc.*, 730 N.W.2d 285, 288 (Minn. App. 2007). Sections of a statute are to be read together to give a whole-act context. *See Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 313 (Minn. 2001). A statute is ambiguous if its language is subject to more than one reasonable interpretation. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If this court determines that a statute is ambiguous, this court may engage in statutory construction to determine legislative intent. *See Hyland v. Metro. Airports Comm’n*, 538 N.W.2d 717, 721 (Minn. App. 1995).

Minnesota law, which implements the Federal–State Extended Unemployment Compensation Act of 1970, allows the payment of extended unemployment benefits. *See* 26 U.S.C. § 3304(a) (2006); Minn. Stat. § 268.115, subs. 3, 5, 7 (2008). The Supplemental Appropriations Act of 2008 amended the Federal–State Extended Unemployment Compensation Act of 1970 to authorize federal emergency unemployment-compensation benefits. *See* Pub. L. No. 110-252, §§ 4001-07, 2323, 2353-57 (2008). The Supplemental Appropriations Act provides that “the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual’s benefit year.” *Id.* § 4002(a). The amount in that account

shall be equal to the lesser of—

(A) 50 percent of the total amount of regular compensation . . . payable to the individual during the individual’s benefit year . . . , or

(B) 13 times the individual's average weekly benefit amount for the benefit year.

Id. § 4002(b)(1).

The Unemployment Compensation Extension Act of 2008, which Congress passed in November 2008, amends, in part, the provision of first-tier benefits:

Section 4002(b)(1) of the Supplemental Appropriations Act . . . is amended—
(1) in subparagraph (A), by striking “50” and inserting “80”; and
(2) in subparagraph (B), by striking “13” and inserting “20.”

Unemployment Compensation Extension Act § 2.

Callington argues that the ULJ misinterpreted the relevant statutes because the November letter he received stated that individuals were eligible for up to 20 weeks of additional benefits, while under the earlier Supplemental Appropriations Act, individuals had only been entitled to up to 13 weeks of additional benefits. Therefore, Callington maintains, the November and December letters related to a new, later benefits period, and he is entitled to total benefits of 80 percent of his benefit account (\$3,313) for a period beginning on the effective date of the November legislation, not just the additional 30 percent (\$1,242) that he received. Therefore, he claims that he is entitled to additional benefits of \$2,071.

If Congress amends an act, but leaves certain portions of the act unchanged, those portions remain in effect. *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 172, 115 S. Ct. 1300, 1307-08 (1995); *see also* 82 C.J.S. *Statutes* § 511 (2009) (stating that the unamended portions of the original act “are continued in force with the same meaning

and effect they have had before the amendment” (footnote omitted)). Thus, after the amendment of the specific numbers relating to first-tier benefits, the rest of the language in the original Supplemental Appropriations Act remains effective, including the portion that provides that “the State will establish . . . *an* emergency unemployment compensation account” for an unemployed individual with respect to that person’s benefit year. Supplemental Appropriations Act § 4002(a) (emphasis added). The November amendment simply changed the numerical amount of benefits available on an account, substituting “80” percent for “50” percent as the total amount payable to the person during a benefit year, and “20” times for “13” times the person’s average weekly benefit amount. The November amendment did not change the benefit period to which the first-tier benefits apply.

Further, the November legislation contains a separate provision for extended, second-tier benefits, which “shall . . . augment[]” an individual’s benefit account if that person’s first-tier benefits have been exhausted. Unemployment Compensation Extension Act § 3. The placement of both first- and second-tier benefit categories in the November legislation, with differing requirements, indicates that first-tier benefits, as amended, are separate and distinct from second-tier benefits, which apply only when first-tier benefits have been exhausted. In fact, Callington later received second-tier benefits under this portion of the November legislation. Thus, the November legislation read as a whole does not support Callington’s argument that his amended first-tier benefits extend to a later time period than his original first-tier benefits.

We acknowledge that the letters that Callington received from DEED were not a model of clarity regarding the increased amount of his benefits as a result of the November 2008 legislation. Nonetheless, read together, they informed Callington that: (1) the balance on his account had increased from 50 percent of his most recent account to 80 percent; and (2) the new legislation added up to 20 weeks of benefits for unemployed workers. The letters did not state that Callington would begin receiving an additional 80 percent of his first-tier benefits.

The ULJ did not err in her interpretation of the statutes relating to Callington's first-tier benefits. She correctly determined that, as a result of the November legislation, he was entitled only to an increase of 30 percent of his first-tier benefits, rather than a further increase of 80 percent of those first-tier benefits, applied to a later time period. Callington has received the full amount of benefits to which he is entitled.

Affirmed.