

CASE NO. A07-348

STATE OF MINNESOTA
IN COURT OF APPEALS

THE WORK CONNECTION, INC.,

Relator,

vs.

SON Q. BUI,

Respondent,

and

DEPARTMENT OF EMPLOYMENT
AND ECONOMIC DEVELOPMENT,

Respondent.

RELATOR'S BRIEF

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STATEMENT OF LEGAL ISSUE

To receive unemployment benefits in Minnesota, an applicant “must have transportation throughout the labor market area.” After Son Bui’s job ended, The Work Connection, a staffing service, offered him a job six miles from his home. Bui turned it down because it was not on a bus line. *Is an applicant who lacks transportation to a suitable job in his labor market area eligible for unemployment benefits?*

Agency decision: The Unemployment Law Judge (ULJ) ruled that Bui’s rejection of the job offered by The Work Connection did not make him ineligible for benefits. The ULJ denied The Work Connection’s appeal, and denied The Work Connection’s request for reconsideration.

Most apposite authorities:

1. Minn. Stat. § 268.085, subd. 15(e).
2. *Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 240 N.W.2d 314 (1976).

STATEMENT OF THE CASE

Respondent Son Bui was employed by Relator The Work Connection, Inc., a staffing agency. After his job ended, Bui established an unemployment benefit account as of September 3, 2006. He was initially granted unemployment benefits. The Work Connection appealed because on September 18, 2006, it had offered Bui another suitable job located just six miles from his home. Bui had rejected the job because it was not on a bus line.

The appeal was also based on subsequent offers of employment that the Unemployment Law Judge (ULJ) determined had been communicated to Bui's sister at his house but not conveyed to Bui. To limit the issue presented here to one of law based on undisputed facts, the subsequent disputed job offers are not a basis for this appeal.

A hearing on the appeal was held on November 2, 2006. The ULJ issued a decision awarding benefits on November 3, 2006. The Work Connection timely requested reconsideration on November 30, 2006, arguing, among other things, that Bui's admission that he lacked transportation to a suitable job within his labor market meant that he was ineligible for benefits. The ULJ issued an Order of Affirmation on February 8, 2007. The Work Connection timely filed its Petition for Writ of Certiorari on February 15, 2007, and obtained a writ the same day. The writ was served on all necessary parties on February 16, 2007.

STATEMENT OF FACTS

The evidence presented at the hearing was uncontested as to the narrow issue presented in this appeal. The Work Connection, Inc., a staffing agency, hired Bui on

February 2, 2004.¹ When he was hired, Bui did not tell The Work Connection that he had no car and required public transportation in order to get to work.² He lived at 7432 Xerxes Ave. N., Brooklyn Park, MN.³ The Work Connection assigned Bui to work as a packaging machine operator at Technical Resin Packaging in Brooklyn Park.⁴ The job was about four miles from his house.⁵ The hours of the position were from 7 a.m. to 3:30 p.m., Monday through Friday, 40 hours per week.⁶ The job paid \$8.25/hour.⁷ Bui's job was terminated by Technical Resin Packaging on August 29, 2006.⁸

Bui's unemployment account is dated September 3, 2006.⁹ The Work Connection called Bui on September 18, 2006 and offered him an entry level warehouse position with a company called Biotest in Coon Rapids.¹⁰ The job was located six miles away from Bui's home.¹¹ It began immediately, paid \$10/hour, and the hours were 8 a.m. to 4:30 p.m., Monday through Friday.¹² The company required no experience, and would provide all necessary training. The duties of the position included shipping and

¹ T. 24. References to "T." herein refer to the Transcript of Testimony prepared by the Minnesota Department of Employment and Economic Development of the hearing in this matter held on November 2, 2007.

² T. 37.

³ T. 17.

⁴ T. 24-25.

⁵ T. 37.

⁶ T. 25, 36.

⁷ T. 25.

⁸ T. 26.

⁹ See Department Exhibit D-1 (A-2). References to "A-" herein refer to the Appendix of Relator, filed and served herewith.

¹⁰ T. 26-27, 38; Department Exhibit D-4 (A-8).

¹¹ T. 45; Department Exhibit D-7 at ¶ D ("located 5.88 miles from applicant's home.") (A-11).

¹² T. 28.

receiving. Specifically, Bui would have been trained to ship packages using FedEx and UPS.¹³

Bui asked if the job was on a bus line; The Work Connection told him it was not, and that he would need to have his own transportation.¹⁴ Buses do not run between Brooklyn Park and Coon Rapids.¹⁵ Bui said he did not have a way to get to the job if it was not on a bus line.¹⁶ The Work Connection said it would continue to try to find Bui work, and the call ended.

The Work Connection documented the above conversation in a contemporaneous record time stamped on September 18, 2006 at 12:55 p.m., Department Exhibit D-4, as follows: "Job Offer declined the entry level warehouse position at Biotest. Does not have transportation."

Following the September 18 phone call, The Work Connection sent Bui a written confirmation of the job offer by certified mail.¹⁷ The return receipt was signed by "Minh Bui." Bui confirmed in his testimony several times that he had received the written job offer.¹⁸ The written job offer described the job consistently with how it had been described in the phone conversation on September 18.

There were some superficial disagreements about facts. Bui disputed that he was told the exact location of the Biotest job, and he denied being told exactly what the job

¹³ T. 27.

¹⁴ T. 28.

¹⁵ T. 29.

¹⁶ T. 28.

¹⁷ Department Exhibit D-5 & D-6 (A-9 & A-10); T. 29.

¹⁸ T. 34, 46.

entailed. However, Bui admits in his written submissions that he was told the job was in Coon Rapids, which is the neighboring suburb.¹⁹ There is no genuine dispute that Bui was told enough about the job to know that it was suitable. The only thing he wanted to know was whether it was on a bus line. He rejected the Biotest job solely because it was not on a bus line. Precisely what else he was told about the job is not material to this appeal.²⁰

Another superficial factual disagreement is Bui's denial that he "declined" the September 18 job offer at Biotest. The following exchange during Bui's cross examination of The Work Connection's witness, Laura Root, succinctly presents the parties' positions:

BUI: *** And the next thing I hear is from unemployment mail me a letter, it say I refuse job, and that's what I don't understand, you know.

ROOT: Okay. That's Exhibit D-6. And at the bottom of this, it says job offer, did the person accept it or decline it. You declined it, Mr. Bui. You did not say yes, I can take that job, yes, I can start tomorrow. You said I do not have a way to get there. That's declining the job.

BUI: Well, I cannot get there, that's the problem. That's why I asked you is there a bus or something. That's how I get around. Even my last job, I bike or take a bus, you know. That's all I can do.²¹

¹⁹ Department Exhibit D-3, second page, handwritten comment at bottom ("She told me at Coon Rapid!") (A-6).

²⁰ See *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996) (employer need not go through the "charade" of detailing all the terms and conditions of an offer that the employer has every reason to believe will be rejected by the employee).

²¹ T. 34.

Bui disputes the suggestion that he “declined” or “refused” the Biotest job because he apparently feels that those terms imply that he had some choice in the matter. He does not dispute the only material fact on which this appeal depends: that he was unable to take a suitable job in his labor market area because he lacked transportation.

The Work Connection continued searching for a job on a bus line. A day or two later, The Work Connection found one at Target Company in Brooklyn Park, near Bui’s previous job at Technical Resin Packaging and on a bus line.²² The Work Connection left a message at Bui’s home on September 20, 2006, but Bui did not call back.²³ The Work Connection also left messages on October 2 and October 3, with the same result.²⁴ Bui testified that his sister had answered the phone, that she did not speak English well, and that he did not get the messages.²⁵ The ULJ accepted Bui’s explanation.

STANDARD OF REVIEW

The Minnesota Unemployment Insurance Law grants the Court of Appeals authority to review decisions of the ULJ by writ of certiorari to the Department of Employment and Economic Development.²⁶ The Court of Appeals may affirm the decision of the ULJ, remand for further proceedings, or reverse it if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion or decision are affected by error of law, among other reasons.²⁷

²² T. 29.

²³ T. 30.

²⁴ T. 32.

²⁵ T. 41-42.

²⁶ Minn. Stat. § 268.105, subd. 7(a).

²⁷ Minn. Stat. § 268.105, subd. 7(d).

The issue before this Court is whether the ULJ should have found, as a matter of law based on the undisputed facts, that Bui was ineligible for benefits because he lacked transportation throughout his labor market. A determination that a person is eligible to receive unemployment compensation is a question of law, subject to de novo review by this Court.²⁸ Similarly, the ULJ's construction of the unemployment law statute is a question of law which is not binding on the reviewing court.²⁹

ARGUMENT

BUI IS NOT ELIGIBLE FOR UNEMPLOYMENT BENEFITS BECAUSE HE LACKS TRANSPORTATION THROUGHOUT HIS LABOR MARKET.

The Work Connection submits that Bui is ineligible for benefits because he lacks transportation throughout his labor market area, and is therefore not “available for suitable employment” as required by Minn. Stat. § 268.085, subd. 15(e). A brief account of Minnesota Unemployment Insurance Law assists in framing the issue for decision.

A. The Minnesota Unemployment Insurance Law Framework Requires that the Applicant Meet Eligibility Requirements.

The Minnesota Unemployment Insurance Law, found at Minn. Stat. chapter 268, provides covered workers with a temporary partial wage replacement to assist the unemployed worker to become reemployed.³⁰ The law requires employers to register with the state, to establish an unemployment tax account and to submit quarterly wage

²⁸ *Roloff v. Comm'r of Dep't of Employment & Econ. Dev.*, 668 N.W.2d 12, 14 (Minn. App. 2003), *rev. denied* (Minn. Nov. 18, 2003).

²⁹ *Lolling*, 545 N.W.2d at 375.

³⁰ Minn. Stat. § 268.03, subd. 1.

reports.³¹ Each employer's account is charged for unemployment benefits that are determined chargeable to that employer.³² In this manner, awards of unemployment benefits are funded by the employers of the applicants, although they are deemed by law to be paid from state funds.³³ Benefits paid from the fund to an applicant are repaid to the fund by the applicant's former employer, pursuant to rules set forth in the law.

The state's obligation to pay benefits comes from Minn. Stat. § 268.069, subd. 1, which says:

The commissioner shall pay unemployment benefits from the trust fund to an applicant who has met each of the following requirements:

- (1) the applicant has filed an application for unemployment benefits and established a benefit account in accordance with section 268.07;
- (2) the applicant is not subject to a disqualification from unemployment benefits under section 268.095 because of a quit or discharge;
- (3) *the applicant has met all of the ongoing eligibility requirements under sections 268.085 and 268.086;*
- (4) the applicant does not have an outstanding overpayment of unemployment benefits, including any penalties or interest; and
- (5) the applicant is not ineligible for unemployment benefits under section 268.182 because of a false representation or concealment of facts.³⁴

³¹ See Minn. Stat. §§ 268.042, subd. 1 & 268.044, subd. 1.

³² Minn. Stat. § 268.045, subd. 1.

³³ Minn. Stat. § 268.069, subd. 2.

³⁴ Minn. Stat. § 268.069, subd. 1 (emphasis supplied).

The unemployment law imposes a duty on the commissioner to pay unemployment benefits in accordance with law, and further provides that “An applicant’s entitlement to unemployment benefits shall be determined based upon that information available without regard to any common law burden of proof... . There shall be no presumption of entitlement or nonentitlement to unemployment benefits.”³⁵

B. One Eligibility Requirement is that the Employee be “Available for Suitable Employment.”

The Unemployment Law contains a set of “eligibility requirements” at Minn. Stat. § 268.085, and a set of “disqualification” provisions at Minn. Stat. § 268.095. The eligibility requirements are conditions that each applicant must satisfy to obtain benefits. The disqualification provisions describe circumstances in which an otherwise eligible applicant will be precluded from receiving unemployment benefits, for example, because the applicant was fired due to employment misconduct.

There are six statutory eligibility requirements, of which only the fourth is relevant here:

An applicant shall be eligible to receive unemployment benefits for any week if:

* * *

(4) *the applicant* was able to work and *was available for suitable employment*, and was actively seeking suitable employment.³⁶

Use of the conjunctive “and” indicates that the applicant must meet all three requirements of this clause: the applicant must be “able to work” *and* “available for

³⁵ Minn. Stat. § 268.069, subd. 2.

³⁶ Minn. Stat. § 268.085, subd. 1(4) (emphasis supplied).

suitable employment” *and* “actively seeking suitable employment.” An applicant who is not “available for suitable employment” does not meet all three requirements, and is therefore not eligible for unemployment benefits.

C. The Availability Requirement Means Having Transportation Throughout the Labor Market Area.

The phrase “available for suitable employment” is defined as follows:

(a) “Available for suitable employment” means an applicant is ready and willing to accept suitable employment in the labor market area. The attachment to the work force must be genuine. An applicant may restrict availability to suitable employment, but *there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.*³⁷

This general definition of “available for suitable employment” indicates that the only barriers to employment must be based on the job’s suitability. “There must be no other restrictions, either self-imposed or created by circumstances.” Lack of transportation is a restriction that is imposed by circumstances. Therefore, by the general definition of “available for suitable employment,” an applicant who lacks transportation to a job is not eligible for benefits.

The general statement of the availability requirement quoted above is clear enough to conclude that lack of transportation makes an applicant unavailable for work. But the subdivision defining the availability requirement has additional definitional clauses that clarify its application in specific situations, such as when an applicant is enrolled in school or is traveling outside the labor market. One of these clauses specifically

³⁷ Minn. Stat. § 268.085, subd. 15(a) (emphasis supplied).

addresses the issue presented here, i.e., lack of transportation. At § 268.085, subd. 15(e), the law states:

An applicant must have transportation throughout the labor market area to be considered “available for suitable employment.”³⁸

Here, the legislature has clarified the availability requirement by explicitly designating lack of transportation as a circumstance that precludes a finding of availability.

The language of this provision leaves little room for construction. Standard dictionary definitions of the word “throughout” indicate that it means “in or during every part; everywhere.”³⁹ An applicant who has access only to job sites that are on bus lines does not satisfy the availability requirement. If the applicant lacks “transportation throughout the labor market area,” then he or she is not “available for suitable employment.” And, of course, if the applicant is not available for suitable employment, then he or she is not eligible to receive benefits.

D. The Availability Requirement Should be Construed According to its Plain Meaning.

The unemployment compensation statute is remedial in nature and must be liberally construed to effectuate the public policy set forth in Minn. Stat. § 268.03.⁴⁰ This policy has led the supreme court to declare that disqualification provisions are to be

³⁸ Minn. Stat. § 268.085, subd. 15 (emphasis supplied).

³⁹ Webster’s New World Dictionary p. 1483 (2d College ed. 1974) (A-79). See also The American Heritage® Dictionary of the English Language: Fourth Edition (2000) (defining “throughout” to mean “In or through all parts; everywhere”) (online dictionary definition found at <http://www.bartleby.com/61/6/T0190600.html>) (A-76).

⁴⁰ *Garcia v. Alstom Signaling Inc.*, 729 N.W.2d 30, 33 (Minn. App. 2007).

narrowly construed.⁴¹ This Court recently declared that the same reasoning applies to ineligibility provisions such as Minn. Stat. § 268.085, subd. 3.⁴²

No court has apparently previously addressed whether the statutory language at issue here, § 268.085, subd. 15(e), should be given a broad or narrow construction. It is neither a disqualification provision nor an ineligibility provision. On its face, subd. 15(e) clarifies the definition of one of the eligibility requirements for unemployment benefits, namely the “available for suitable employment” requirement. As such, it helps describe the class of people whom the statute is intended to aid. The public policy underlying the unemployment statute does not attach to people who are not eligible for benefits in the first place. Because subd. 15(e) is not a disqualification provision or an ineligibility provision, it ought not be viewed through the prism of “narrow construction.”

In the end, however, it does not matter whether this Court construes subd. 15(e) narrowly or broadly. The result will be the same, because the language is not ambiguous. The canons of statutory construction require that words and phrases be construed according to their common and approved usage.⁴³ When language of a statute is unambiguous, the court applies its plain meaning without resort to rules of construction or legislative history.⁴⁴

⁴¹ *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

⁴² *Garcia*, 729 N.W.2d at 33.

⁴³ Minn. Stat. § 645.08, subd. 1.

⁴⁴ *In re Molly*, 712 N.W.2d 567, 571 (Minn. App. 2006); *State v. Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

The statute at issue has just one possible meaning: To be eligible for benefits, the employee must have means of getting to any suitable job within the labor market area.

E. Judicial Precedent Places the Problem of Transportation on the Employee.

Minnesota courts have long held that the responsibility to get to the place of employment lies with the employee, not the employer. In the 1976 case of *Hill v. Contract Beverages, Inc.*, the employee's shift was changed, which meant that he could not get a ride to work with a fellow employee and lost his job.⁴⁵ The employee claimed benefits, arguing that the loss of his job was caused by the employer. The supreme court disagreed, holding that "the fact that such transportation was not available on another shift cannot be attributed as a fault of the employer. *In the absence of contract or custom imposing an obligation of transportation upon the employer, transportation is usually considered the problem of the employee.*"⁴⁶ The supreme court cited as precedent Minnesota cases dating back to 1953. Thus, the long-standing general rule in Minnesota, as stated in *Hill*, is that the employee is responsible for finding transportation to the job.

The Court of Appeals has applied this principle to the precise situation here, i.e., where the applicant refuses suitable employment because of transportation issues. In its unpublished decision in *Ess v. Olsten Staffing Services*, the applicant worked for a temporary employment agency.⁴⁷

⁴⁵ 307 Minn. 356, 240 N.W.2d 314 (1976).

⁴⁶ 240 N.W.2d at 358.

⁴⁷ Case No. CX-99-939 (Minn. Ct. App. Dec. 28, 1999) (1999 WL 1256587) (A-80).

When his job ended, he was offered another one which he rejected in part because of transportation inconvenience. He argued the job was unsuitable because it required him to travel 18 miles. Noting that “Transportation is the problem of an employee and failure to reach a job is not good cause to decline an employment offer,” the Court of Appeals affirmed the department’s decision denying benefits.

Although this Court’s unpublished decisions are not precedential, they may have persuasive value on the question of whether DEED’s construction of the statute is reasonable.⁴⁸ The Court could fairly ask DEED why it routinely advocates to this Court that transportation is the problem of the employee, but argues something different here. The notion that “transportation is the problem of the employee” in unemployment law has been expressed so often in judicial decisions that it approaches the status of a mantra.⁴⁹

⁴⁸ *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993)

⁴⁹ See *Cherry v. American National Ins. Co.*, 426 N.W.2d 475, 477 (Minn. App. 1988) (“the provision of transportation is usually the duty of an employee”); *Hackenmiller v. Ye Olde Butcher Shoppe*, 415 N.W.2d 432, 434 (Minn. App. 1987) (employee’s transportation problem not attributable to employer); *Deering v. Unitog Rental Services*, 381 N.W.2d 486, 487 (Minn. App. 1986) (“transportation is generally considered the problem of an employee”); *Oudekerk v. Barrett Construction*, No. C9-98-1599 (Minn. App. Feb. 23, 1999) (1999 WL 87056) (“Minnesota courts have held that inability to accept reemployment because of transportation . . . is not good cause to refuse suitable work.”) (A-82); *Johnson v. Allied Interstate, Inc.*, No. C4-98-1381 (Minn. App. Dec. 8, 1998) (1998 WL 846568) (“a claimant’s failure to secure transportation does not provide good cause to decline a job offer.”) (A-84); (1998 WL 373346) *Amos v. Air Lite Transport*, No. C9-98-95 (Minn. App. July 7, 1998) (1998 WL 373346) (“Transportation to and from work is generally the concern of the employee....”) (A-86); *Howe v. Precision Fitting & Valve Co.*, No. C0-97-1335 (Minn. App. Feb. 10, 1998) (1992 WL 51476) (same) (A-88); *Jordan v. Leaf Industries, Inc.*, No. C2-92-1088 (Minn. App. Dec. 1, 1992) (1992 WL 350304) (“obtaining of transportation is usually the duty of the employee”) (A-92).

F. The Legislature Intended the Availability Requirement to Impose Responsibility for Transportation on the Employee.

On prior occasions on which it has been asked to interpret the Minnesota Unemployment Insurance Law, this Court has looked for guidance to the legislative history of that statute.⁵⁰ Not surprisingly, the legislative history of § 268.085, subd. 15(e) confirms that it was intended to mean what it says. The provision was enacted in 1999 as part of a bill making mostly technical changes to existing law that were intended to make it more “user friendly.”⁵¹ The provision adding the definition of “available for employment” was intended to codify existing administrative rules.⁵² The House Research report on the bill explains that the subdivision “Defines term as in existing rules.”⁵³

The bill was referred to the Senate’s Jobs, Energy and Community Development Committee.⁵⁴ It had already been approved by the Reemployment Insurance Advisory Council, comprised of two representatives, two senators and representatives from organized labor and private groups.⁵⁵

Testifying in support of the bill were two representatives from what is now the Department of Employment and Economic Development, including its staff attorney, Lee

⁵⁰ *E.g., Lolling*, 545 N.W.2d at 376.

⁵¹ Affidavit of Juan Vega ¶¶ 7, 10-11, 23, 27, 31 & Exhibits 3, 6, 8 (A-48, 51-52, 56, 61, 63).

⁵² Vega Aff. ¶ 10 (A-48).

⁵³ Vega Aff. Ex. 8, page 5 (A-64).

⁵⁴ Vega Aff. ¶ 6 (A-48).

⁵⁵ Vega Aff. ¶ 8 & Ex. 9 (A-48 & 65).

Nelson.⁵⁶ During the hearing, Sen. Ellen R. Anderson asked specifically about subdivision 15(e). The following exchange occurred:

Sen. Anderson: [Does § 268.085] repeat what is already in the rules? I wasn't aware of this before, for example, "a claimant must have transportation throughout the labor market area to be considered available for employment." Has that been the rule? I'm just curious how that gets interpreted.

Mr. Nelson: [Subdivision 15(e)] is almost exactly word for word from [the Minnesota Rules] § 3305.0500. There is nothing new here. Yes, you have to have transportation throughout your labor market area. That usually comes up in a situation which somebody lives in rural Minnesota, then all of a sudden, doesn't have a car. And they may be out on a farm and say "I can't get anywhere to work anymore."

Sen. Anderson: That means they get no benefits?

Mr. Nelson: The law would provide that you're not available for work because you don't have transportation. The law does require that you be available for work. Transportation being among the most fundamental requirements. In the metro area there is the mass transit available. The metro area is not generally a problem. But in upstate, it can be, if you live in a very rural area and you lose your transportation. But this is the present law.⁵⁷

The bill was then passed by both the House and the Senate, and signed into law by the Governor. The requirement that an applicant must have his or her own means of transportation to work within the labor market area has been expressly and intentionally adopted as the law of Minnesota. The construction of the statute advocated by The Work Connection is exactly what was intended by the legislature when it codified existing law in 1999.

⁵⁶ Vega Aff. ¶ 9 (A-48).

⁵⁷ Vega Aff. ¶ 13 (A-49).

G. DEED Understands that the Availability Requirement Imposes Responsibility for Transportation on the Employee.

The testimony of DEED's staff attorney before the legislature is reflective of its official publications. DEED's "Unemployment Benefits Handbook" available to the public in paper form or electronically on its web site, explains the requirement that an applicant be "available for work" as follows:

You must be ready and willing to accept full-time work in your usual occupation or other suitable employment. You will be ineligible for benefits if personal reasons cause you to unreasonably restrict your work hours, wage, commuting distance, or other conditions of employment. ***Being available for work includes making necessary transportation and family care arrangements.*** You are not considered available for work if you are in jail or out of the area for a reason other than to seek work.⁵⁸

DEED's website also contains the following explanation of the term "available for employment:"

To be eligible for benefits, you must be available for suitable employment. You must be ready to accept work if suitable employment is offered to you. * * * ***Being available includes having transportation (personal vehicle, public transit, car pool, etc.) and necessary family care arrangements.***⁵⁹

Thus, DEED's official view of the availability requirement is that having transportation to work is a requisite.

⁵⁸ Department of Employment and Economic Development, *Unemployment Benefits Handbook* p. 4 (emphasis supplied) (available online at <http://www.uimn.org/ui/22c/22c.htm>) (A-46).

⁵⁹ See DEED webpage at <http://www.uimn.org/ui/availabl.htm> (emphasis supplied) (A-75).

The Work Connection is aware of at least one other decision by a DEED adjudicator which concluded precisely the opposite of the ULJ's decision in this case. In the Determination of Ineligibility for Walter L. Gayles, the applicant contended that there was good cause to refuse a job offer "because of the Maple Grove bus system or the possibility of no bus line or bus line difficulty."⁶⁰ The adjudicator dismissed this argument on the basis that "The applicant is responsible for transportation to and from work."⁶¹ This ruling by a different DEED adjudicator shows that DEED has on other occasions interpreted the statute in the manner advocated herein by The Work Connection.

Reviewing courts on occasion give weight to an agency's construction of statutory language that is technical in nature and where the agency's interpretation is one of longstanding application.⁶² The interpretation by the ULJ in this case is neither of technical language nor of longstanding application. It is an interpretation of the phrase "An applicant must have transportation throughout the labor market," which is hardly a technical phrase. Further, the ULJ's interpretation is not longstanding, and in fact contradicts the agency's longstanding official position. The Court should give no deference to the ULJ's position.

H. Bui is Ineligible for Benefits Because he Lacks Transportation Throughout his Labor Market.

⁶⁰ A-40, 41.

⁶¹ A-40.

⁶² *Lolling*, 545 N.W.2d at 375.

Bui is not eligible for benefits because he lacks transportation throughout his labor market area. His testimony establishes that he would not take a job located less than 6 miles from his house because it was not on a bus line. The job was suitable in every way – it paid more than his prior job, the hours were the same and the duties were appropriate to Bui’s skills and experience. Bui’s only stated reason for declining the job was that it was not on a bus line, and he had no other means of transportation.

It has not been suggested that the Biotest job was outside Bui’s “labor market area.” Although this phrase is undefined in the statute, courts have found that jobs located substantially greater distances than six miles from the employee’s home are not unreasonably far away.⁶³ Clearly, the six mile commute to Biotest was well within Bui’s labor market area.

The ULJ’s error flows from his failure to acknowledge that Bui had to have transportation “throughout” his labor market area in order to receive benefits. “Throughout” means “in or during every part; everywhere.”⁶⁴ It does not mean “to job sites that are on a bus route.” Had the legislature meant to transfer part of the responsibility for transportation onto the employer when it enacted subdivision 15(e), it would have said something more nuanced than “An applicant must have transportation throughout the labor market area.”

⁶³ See *Preiss v. Commissioner of Economic Security*, 347 N.W.2d 74, 76 (Minn. App. 1984) (22 miles is reasonable).

⁶⁴ Webster’s New World Dictionary p. 1483 (2d College ed. 1974) (A-79). See also *The American Heritage® Dictionary of the English Language: Fourth Edition* (2000) (defining “throughout” to mean “In or through all parts; everywhere”) (online dictionary definition found at <http://www.bartleby.com/61/6/T0190600.html>) (A-76).

In his Order of Affirmation, the ULJ wrote:

[T]he judge is of the opinion that every applicant for unemployment benefits is not required by law to have a car to get to all locations within the labor market area. The evidence shows that Bui worked for the employer for approximately two years and took a bus to work. The unrefuted facts are that Bui did not have a car and he lives in Brooklyn Park. The offer of September 18, 2006 was in Coon Rapids, and admittedly not on a bus line. The employer does not dispute this. Bui would have public transportation to a reasonable number of locations in the labor market area. He would be available for employment at any location which is on a bus line. Therefore, it cannot be said that Bui is not available for employment in the labor market area.⁶⁵

In other words, the ULJ contends that transportation to a “reasonable” number of locations in the labor market area satisfies the statutory language requiring transportation “throughout” the labor market area. The ULJ contends that anybody who lives on a bus line is automatically eligible for benefits because they have transportation “in” the labor market area. The ULJ reached this conclusion without referring to the word “throughout” or explaining its presence in subdivision 15(e).

The ULJ’s construction is unreasonable because it nullifies the word “throughout” in subdivision 15(e). The ULJ’s final sentence quoted above illustrates the point. The ULJ wrote “It cannot be said that Bui is not available for employment *in* the labor market area.” “Throughout” has been replaced by “in.” Under the plain, dictionary meaning of “throughout,” the question is not whether the applicant can get to *some* locations in the labor market area, or a “reasonable” number of locations in the labor market area. The issue is whether the applicant has transportation *throughout* the labor market area. By

⁶⁵ A-36.

nullifying the word “throughout,” the ULJ’s interpretation runs afoul of that most basic rule of statutory construction, that all words in a statute must be given meaning if possible, and that the letter of the law shall not be disregarded under the pretext of pursuing the spirit.⁶⁶

The record is clear that Bui did not have transportation to “every part” or “everywhere” within his labor market area because he could not get to the Biotest job just six miles away. Therefore, Bui cannot be considered to be available for suitable work, and is ineligible for benefits.

Whether the long-standing rule that transportation is the problem of the employee is good public policy is not an issue before the Court. The legislature would be the appropriate body to determine whether an unemployment insurance system that discourages the employment of people who have limited transportation by imposing unstopable unemployment benefit payments on their employers is preferable to the current system. That debate has no place here, where the plain language of the statute dictates that Bui is ineligible for benefits.

CONCLUSION

Under the Minnesota Unemployment Insurance Law, transportation to and from work is, and always has been, the problem of the employee. The ULJ’s ruling is erroneous because it shifts responsibility for a lack of transportation onto the employer. Bui’s inability to get to a job located six miles from his house is a circumstance that

⁶⁶ Minn. Stat. § 645.16.

makes him not available for work. The Work Connection asks that this Court reverse the decision of the ULJ, and declare that Bui was ineligible for benefits.

**SIEGEL, BRILL, GREUPNER
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