

No. A12-764

State of Minnesota
In Court of Appeals

JAMES WEIR,

Relator,

vs.

ACCRA CARE, INC.,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

LEGAL ISSUE..... 1

STATEMENT OF THE CASE/ STATEMENT OF FACTS 1

STANDARD OF REVIEW 3

ARGUMENT FOR INELIGIBILITY..... 3

 1. WEIR IS INELIGIBLE FOR BENEFITS BECAUSE HE DID NOT EARN ANY WAGES
 IN COVERED EMPLOYMENT..... 3

 2. WHILE THE DEPARTMENT DID NOTIFY ALL EMPLOYERS OF THE STATUTORY
 CHANGE, UNEMPLOYMENT INSURANCE LAW IS ENFORCEABLE EVEN WITHOUT
 SUCH NOTICE. 5

 3. THE STATUTE LIMITED WEIR’S ELIGIBILITY DOES NOT VIOLATE THE EQUAL
 PROTECTION CLAUSE OF EITHER THE STATE OR FEDERAL CONSTITUTIONS..... 7

CONCLUSION 11

APPENDIX..... 13

TABLE OF AUTHORITIES

CASES

Baron v. Lens Crafters, Inc., 514 N.W.2d 305, 307 (Minn. App. 1994) -----7

Gluba ex rel. Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713, 719 (Minn. 2007) -----8

Haugen v. Superior Development, Inc., ___ N.W.2d ___, 2012 WL 3262980, at *5 (Minn. App. Aug. 6, 2012) -----2, 7

Irvine v. St. John's Lutheran Church of Mound, 779 N.W.2d 101, 105 (Minn. App. 2010) -----5

Jackson v. Global Marketing Opportunities, Inc., 2007 WL 2993836, at *3 (Minn. App. Oct. 16, 2007) -----6

Jackson v. Minneapolis Honeywell Regulator Co., 47 N.W.2d 449 (Minn. 1951) -2

Lolling v. Midwest Patrol, 545 N.W.2d 372 (Minn. 1996)-----2, 6

Peterson v. Minn. Dept. of Labor & Indus., 591 N.W.2d 76, 79 (Minn. App. 1999), review denied (Minn. May 18, 1999) -----8

Podratz v. Built By Design, Inc., 2010 WL 2035809, at *2 (Minn. App. May 25, 2010) -----6

Ress v. Abbott Northwestern Hosp., Inc., 448 N.W.2d 519, 523 (Minn. 1989) -----3

Truax v. CFT Communications, Inc., 2009 WL 2746304, at *2 (Minn. App. Sep. 1, 2009) -----6

STATUTES

Minn. Stat. § 116J.401, subd. 1(18) (2010) -----2

Minn. Stat. § 256B.0659 (2010) -----4

Minn. Stat. § 268.035, subd. 12 (2010) -----4

Minn. Stat. § 268.035, subd. 20 (2010) -----4

Minn. Stat. § 268.069, subd. 1(2010) -----3

Minn. Stat. § 268.069, subd. 2 (2010)-----2

Minn. Stat. § 268.069, subd. 3 (2010)-----7

Minn. Stat. § 268.07, subd. 2(a)(1) and (2) (2010)-----3, 4

Minn. Stat. § 268.105, subd. 7 (2010)-----2, 3

RULES

Minn R. Civ. App. P. 115-----2

Legal Issue

Under the law, only individuals who have earned wages in “covered employment” may be paid unemployment benefits. Work as a personal care assistant for an immediate family member is not “covered employment.” James Weir worked as a personal care assistant for his mother. Did Weir earn wages in covered employment?

Unemployment Law Judge Bryan Eng concluded that Weir was ineligible for unemployment benefits, as he could not establish a benefit account without first earning wages in covered employment.

Statement of the Case/ Statement of Facts

James Weir worked as a full-time personal care assistant for Accra Care, Inc., from March of 2010 through December of 2011, providing care for his mother until she passed away.¹

The question is whether Weir earned wages in covered employment that would allow him to establish an unemployment benefit account. Weir attempted to establish a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”). A Department clerk determined that Weir was ineligible for benefits because he had not earned any wages in covered employment.² Weir appealed the determination, and Unemployment Law Judge

¹ T. 7-8.

² E-1. Transcript references will be indicated “T.” Exhibits in the record will be “E-” with the number following.

(“ULJ”) Bryan Eng conducted a de novo hearing. The ULJ also found that Weir had not earned wages in covered employment, was not eligible to establish an account.³ Weir then requested reconsideration, and the ULJ affirmed.⁴

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.⁵ Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not by an employer or from employer funds.⁶ The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an unemployment law judge’s decision.⁷

The matter now comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Weir under Minn. Stat. § 268.105, subd. 7(a) (2012) and Minn. R. Civ. App. P. 115.

³ Appendix, A5-A8.

⁴ Appendix, A1-A4.

⁵ Minn. Stat. § 116J.401, subd. 1(18) (2010).

⁶ Minn. Stat. § 268.069, subd. 2; *see also* *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); *Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951); *Haugen v. Superior Development, Inc.*, ___ N.W.2d ___, ___, ___ WL ___ at * ___ (Minn. App. 2012). Unemployment benefits are paid from state funds, even though taxes paid by employers helped create the fund.

⁷ Minn. Stat. § 268.105, subd. 7(e) (2010).

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Weir's substantial rights may have been prejudiced because the decision of the ULJ was based on an unlawful procedure, affected by error of law, is unsupported by substantial evidence, or is arbitrary or capricious.⁸ As the facts in this case are undisputed, the question of whether the law precludes payment of benefits is a legal one that the Court reviews de novo.⁹

Argument for Ineligibility

Under the law, unemployment benefits are payable from the unemployment insurance trust fund only if an applicant meets each of the five listed requirements.¹⁰ The disputed requirement is the first, which allows benefits only when “[t]he applicant has filed an application for unemployment benefits and established a benefit account in accordance with Section 268.07.”

1. Weir is ineligible for benefits because he did not earn any wages in covered employment.

Weir does not qualify for an unemployment insurance benefit account, as no applicant can establish an account without having earned wages in covered employment. The law requires a certain amount of “wage credits” to establish a

⁸ Minn. Stat. § 268.105, subd. 7(d) (2012).

⁹ *Ress v. Abbott Northwestern Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

¹⁰ Minn. Stat. § 268.069, subd. 1.

benefit account.¹¹ “Wage credits” is defined as the amount of wages paid within the applicant’s “base period” for “covered employment.” “Covered employment” includes all employment performed in the state of Minnesota unless excluded as “noncovered employment.”¹² Thus, in order to be found eligible for benefits, this Court would have to find that Weir earned wages in “covered employment”. Weir does not contend that he has earned any other wages that could be used to establish an account, and so the only question is whether the wages he earned as a personal care assistant to his mother constituted wages earned in “covered employment”.

There are currently 34 specific exclusions to covered employment set out in the definition of “noncovered employment,”¹³ including “employment for a personal care assistance provider agency by an immediate family member of a recipient who provides the direct care to the recipient through the personal care assistance program under section 256B.0659.”¹⁴ Weir’s mother was an immediate family member, which under Minn. Stat. § 268.035, subd. 19a includes “an individual’s spouse, parent, stepparent, grandparent, son or daughter, stepson or stepdaughter, or grandson or granddaughter.”

There is no factual dispute: under the law, the work that Weir performed for ACCRA was “noncovered employment.” This Court has consistently held that the statute means what it says, and that wages earned in noncovered employment

¹¹ Minn. Stat. § 268.07, subd. 2(a)(1) & (2).

¹² Minn. Stat. § 268.035, subd. 12.

¹³ Minn. Stat. § 268.035, subd. 20.

¹⁴ Minn. Stat. § 268.035, subd. 20(19).

cannot be used to establish a benefit account.¹⁵ Weir has no wage credits and cannot establish a benefit account, and no unemployment benefits are payable. Weir does not argue that he is entitled to benefits under the language of the statute, but instead claims a constitutional or equitable entitlement to benefits. The Department next addresses those arguments.

2. While the Department did notify all employers of the statutory change, Unemployment Insurance Law is enforceable even without such notice.

Weir's brief also argues that the Department or his employer should have notified him that he would not be eligible for unemployment benefits based on his employment at ACCRA. It is certainly unfortunate that Weir was unaware that his employment was not covered. The Department, based on the tax reporting of employers like ACCRA, has no way of knowing which employees are giving care to family members.

And even if ACCRA were aware of the limitation of coverage for family members offering assistance, the law does not contain any sort of notice requirement, either from the Department to ACCRA, or from ACCRA to Weir. While this Court has not yet considered this particular statutory provision limiting coverage for PCA care to family members, it has on multiple occasions considered the limitation of coverage for those who own businesses, or work for relatives in a business that the relative owns. As this Court acknowledged in *Truax v. CFT*

¹⁵ *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 105 (Minn. App. 2010).

Communications, Inc., the statute is clear and unambiguous, and a company's ignorance of the law does not somehow entitle its officers to benefits.¹⁶ Similarly, in *Jackson v. Global Marketing Opportunities, Inc.*, this Court found that a misunderstanding of the election requirements did not remove a corporation from the election of coverage requirement, and pointed out that there is no equitable entitlement to benefits.¹⁷ This Court reached the same conclusion in *Podratz v. Built By Design, Inc.*, again noting that the applicant, while sympathetic, had simply not earned the requisite wages in covered employment.¹⁸ In all three of these cases, the Court affirmed the ULJs' findings of ineligibility. More generally, the Supreme Court indicated in *Lolling v. Midwest Patrol* that the fact that an employer fails to do something does not mean that a worker is entitled to benefits.¹⁹

It also does not matter that Weir became a PCA to his mother when a different version of the statute was in effect. The statute states, and as this Court has previously held, an employee does not have a vested right to unemployment

¹⁶ 2009 WL 2746304, at *2 (Minn. App. Sep. 1, 2009). (Appendix, A14-A16)

¹⁷ 2007 WL 2993836, at *3 (Minn. App. Oct. 16, 2007). (Appendix, A17-A19)

¹⁸ 2010 WL 2035809, at *2 (Minn. App. May 25, 2010). (Appendix, A9-A10)

¹⁹ 545 N.W.2d 372, 376 (Minn. 1996).

benefits,²⁰ nor is there any equitable entitlement to unemployment benefits.²¹ Unemployment benefits are a creation of legislative enactment, and benefits are payable only if the requirements of those legislative enactments are met. Weir was never promised benefits, nor was he induced to take the PCA employment. Weir does not meet the statutory requirements for covered employment, and is not eligible to establish an account.

3. The statute limited Weir's eligibility does not violate the equal protection clause of either the state or federal constitutions.

Finally, Weir argues that it is unconstitutional to treat personal care assistants differently when they provide care for family members, as opposed to strangers, as this violates the equal protection clause. Statutes are presumed to be constitutional, and Weir bears the burden of establishing beyond a reasonable doubt that a challenged statute violates a constitutional right.²² In order to prevail on his claim that he has been denied equal protection of the law, Weir would have to show that he “was treated differently from a person with whom [he] is similarly situated,” and this Court will find a statute to be unconstitutional “only with

²⁰ Minn. Stat. § 268.22; *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307 (Minn. App. 1994); see also *Christenson v. Christenson & Associates Inc.*, 2009 WL 4573754, at *3 (Minn. App. Dec. 8, 2009) (“The legislature, however, reserves the authority to amend the unemployment statutes, and employees who submit payments during the effective dates of previous statutes do not establish an entitlement to receive benefits under statutory provisions that are no longer in effect.”)Appendix, A11-A13.

²¹ Minn. Stat. § 268.069, subd. 3.

²² *Haugen v. Superior Development, Inc.*, ___ N.W.2d ___, 2012 WL 3262980, at *5 (Minn. App. Aug. 6, 2012).

extreme caution and when absolutely necessary.”²³ The Minnesota Supreme Court in *Gluba ex rel. Gluba* explained the rational basis test that Minnesota courts apply in cases such as this:

When applying rational basis review under the Equal Protection Clause of the Fourteenth Amendment, we inquire “whether the challenged classification has a legitimate purpose and whether it was reasonable [for the legislature] to believe that use of the challenged classification would promote that purpose.” But when we apply rational basis review under art. I, § 2 of the Minnesota Constitution, we have sometimes applied a “higher standard.” This higher standard—often characterized as the Minnesota rational basis test—requires that:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.²⁴

Workers who provide personal care assistance to family members are not similarly situated to those who provide personal care assistance to non-family members, and there is also a rational basis for the legislature to treat them differently. In general, those who provide personal care assistance to family members do not perform personal care assistance as a career. They take the

²³ *Id.*, citing *Peterson v. Minn. Dept. of Labor & Indus.*, 591 N.W.2d 76, 79 (Minn. App. 1999), review denied (Minn. May 18, 1999).

²⁴ *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 721 (Minn. 2007).

position not because they choose that particular type of work, but because they rise to the laudable challenge of caring for a family member in need. Most will return to a prior line of work when the family member no longer needs their care. This was part of the discussion this writer was involved in with Senate Counsel who initiated the discussion on behalf of Senator Linda Berglin.

And, unfortunately, as relator's brief notes, the legislature initiated the amendment to the statute because of a type of manipulation of state funds unique to this relationship between family members. When a patient is approved for a certain number of PCA hours for a certain six-month period, and is cared for by a non-relative, then the PCA will offer care only during those hours.

But for many applicants who offered PCA care to family members, this was not the case. The state noticed a problem unique to this group: applicants would front-load all of the approved hours during any given six-month period, claiming that they worked extraordinarily high hours during the early weeks or months, and then collect unemployment benefits during the remainder of the time period, but they still gave care to the family member while collecting benefits. These PCAs then collected both wages and unemployment benefits every year, which required the complicity of their family member clients. Both the PCA salaries and the reimbursement cost of the unemployment benefits are paid from a limited pool of money appropriated by the legislature for PCA care. Such manipulation drains the available resources, and could ultimately lead to cuts in coverage for patients who

urgently need such services. The statute limiting covered employment is an attempt to preserve such resources.²⁵

While such manipulation would also theoretically be possible in non-family settings, it is substantially less likely. Non-family clients would have no motivation to seek unemployment benefits for unrelated PCAs, nor would they be likely to report that all of their care hours had been used up early in the six-month period, risking that the non-relative PCA would not follow through on the bargain, and continue showing up to provide care even after the hours were reported and the wages were paid. The statute was amended, in Laws 2010, ch. 347, art. 2, to indicate that personal care assistance to family members constitutes noncovered employment. This legislative fix was an attempt to address the problem of manipulation.

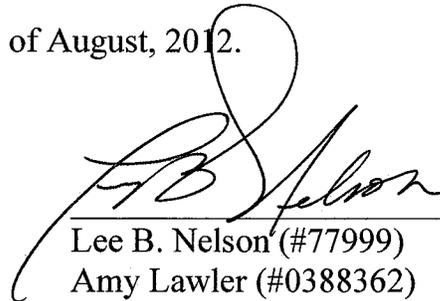
The legislative fix was undoubtedly imperfect. There are certainly applicants like Weir who never attempted to manipulate the system. Similarly, it is unlikely that PCAs working for non-family members never manipulate the system. But that is not the constitutional question. PCAs who provide personal care assistance as a career are fundamentally different from family members who provide care as PCAs only to other family members, and it is rational for the legislature to treat them differently. Weir has not met his burden of showing that the classification is unconstitutional.

²⁵ Examples in legislative discussion involved hundreds of thousands of dollars.

Conclusion

James Weir did not earn any wages in covered employment at ACCRA during his base period. Therefore, Weir is not entitled to the payment of unemployment benefits from the Minnesota Unemployment Insurance Trust Fund. The Department requests the Court affirm the decision of Unemployment Law Judge Bryan Eng.

Dated this 27th day of August, 2012.



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