

No. A06-0660

State of Minnesota
In Court of Appeals

MARTIN GARCIA,

Relator,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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I. LEGAL ISSUE

Minnesota law specifies that severance payments are, for the purposes of determining their effect on unemployment benefits, applied to the period immediately following the last day of employment, no matter when they are actually paid. Martin Garcia's last day of employment was May 24, 2005, and he began receiving severance in November 2005. Did the unemployment law judge correctly allocate the benefits to the period immediately following May 24, 2005, rather than to the period following the pay date?

II. STATEMENT OF THE CASE

This case involves the question of Relator Martin Garcia's entitlement to unemployment benefits. Garcia was laid off on May 24, 2005, with the expectation that he would later return to his job. He established an unemployment benefit account and collected more than \$10,000 in benefits from June through November 2005. In November 2005, his employer elected to make his separation permanent, which made Garcia eligible for nearly \$1500 per week of severance pay for 61 weeks, for a total of \$86,859.12 in severance pay.

The department issued a determination applying the severance pay to the period immediately following Garcia's last day of employment, and determined that he was ineligible for the benefits he had received and was overpaid those benefits. The department issued the ineligibility determination and overpayment determination, and Garcia appealed both.

After a de novo evidentiary hearing, a department unemployment law judge affirmed the initial determinations. (Appendix to Department's Brief, A3-A5 and A8-A10) Garcia requested reconsideration, and the ULJ issued an order affirming the initial decision. (Appendix to Department's Brief, A1-A2 and A6-A7)

This matter is before the Minnesota Court of Appeals on a writ of certiorari obtained by Garcia under Minn. Stat. §268.105, subd. 7(a) (2004 and Supp. 2005) and Minn. R. Civ. App. P. 115.

III. STATEMENT OF FACTS

Martin Garcia worked for Alstom Signaling from March 3, 1971 until May 24, 2005. (T.10)¹ On May 24, 2005, he was laid off due to lack of work. (T.11, 14) The expectation at that time was that he would eventually return to work. During the months of June through early November, Garcia collected unemployment benefits.

On November 9, 2005, Garcia received a call from his employer stating that his separation would be permanent and that he would become eligible for severance pay that he would receive every other week in the amount of \$1423.92.

IV. ARGUMENT

A. SUMMARY OF ARGUMENT

The statute in this case is unambiguous. The severance pay that Garcia received is designated by statute as a payment that delays benefits, and the statute

¹ Transcript references will be indicated as "T."

is explicit that severance pay is applied to the period immediately following the last day of employment, which, it is undisputed, was May 24, 2005. The ULJ correctly concluded that as a result of collecting nearly \$87,000 in severance as a result of his separation from employment, Garcia is ineligible for \$10,353 in unemployment benefits that he received after that separation.

B. STANDARD OF REVIEW

Effective for unemployment law judge decisions issued on and after June 25, 2005 that are directly reviewed by the Court of Appeals, the legislature restated the standard of review at Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005) as follows:

(d) The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

C. ARGUMENT FOR NON-ENTITLEMENT TO UNEMPLOYMENT BENEFITS

Minn. Stat. §268.085, subd. 3 (2004), provides:

(a) An applicant shall not be eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment, equal to or in excess of the applicant's weekly unemployment benefit amount, in the form of:

(1) severance pay, bonus pay, vacation pay, sick pay, and any other money payments...paid by an employer because of, upon, or after separation from employment, but only if the money payment is considered wages at the time of payment under section 268.035, subdivision 29, or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act. This subdivision shall apply to all the weeks of payment and shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

- (1) If the payments are made periodically, the total of the payments to be received shall be divided by the applicant's last level of regular pay from the employer; or
- (2) If the payment is made in a lump sum, that sum shall be divided by the applicant's last level of regular pay from the employer.

* * *

This case is much simpler than it appears. These are certainly benefits that Garcia "has received." The question of whether he received them "with respect to" the weeks during which he collected unemployment is a question specifically addressed by Minn. Stat. §268.085, subd. 3, paragraph (b). The questions presented to the department were therefore: first, whether Garcia received severance pay as defined by Minn. Stat. §268.085, subd. 3, paragraph (a); and second, what weeks that severance pay should be applied to and in what amounts, under subdivision 3, paragraph (b).

In order for severance pay to affect unemployment benefits, paragraph (a) provides that two conditions must be met. First, the severance must be paid because of separation from employment, which Garcia does not deny. Second, it must be a payment that is "considered wages at the time of payment." Garcia's argument on this point is rather murky, because he seems to find this issue highly

critical to his argument, but he does not actually deny that the severance was considered wages at the time it was paid, beginning in November. “The time of payment” is the point at which the money is paid: namely, the weeks when Garcia receives checks. The only requirement of paragraph (a) is that the payment be considered wages at *that* time. Minn. Stat. §268.035, subdivision 29, defines “wages” to include “all compensation for services, including... severance payments.” It then goes on to provide for exceptions, none of which apply, and none of which Garcia claims apply. Clearly, at the time Garcia began being paid, his severance was considered wages under that definition.

Garcia seems to misunderstand this provision somewhat, and to confuse it with the provisions of paragraph (b) relating to allocation of payments over particular weeks. Garcia’s analysis of paragraph (a) seems to jump ahead and read “the time of payment” to be the time that paragraph (b) calls for the payment to be applied. He is mistaken. “The time of payment” is simply the time that the payment is made. For the purposes of paragraph (a), if the severance is considered wages at the time the checks are written, then the matter of the paragraph (a) definition is resolved. Paragraph (b) does not have any bearing on this analysis. Paragraph (a) distinguishes severance payments like the ones at issue here from things like insurance contributions and other items that are not considered wages at the time the employer pays them. At this point in the analysis, the question of which weeks the payment should apply to has not even been reached.

We then proceed to paragraph (b), which provides that *irrespective of when payments are made*, they are applied to the period immediately following termination of employment. The reason for this, in addition to the fact that it is helpful to provide guidance about the application of the language about receipt of benefits “with respect to” certain weeks, is obvious. If the statute did not explicitly provide for application of severance to the weeks following separation, employers and employees would easily circumvent the requirements avoiding double payment of severance and unemployment by delaying payment of severance until after some months of unemployment benefits were collected. Employers could simply write up severance agreements stating that employees would not receive severance until three months after their separation, allowing employees to collect three months of unemployment benefits before their severance started and avoiding the application of the statute.

The entire purpose of paragraph (b) is to look beyond the easily manipulated matters of when payments are made, what they’re called, and what time periods they are purportedly “for,” and simply make severance applicable to the end of the employment. This is true whether the payments are periodic or are made in a lump sum, and it is utterly unaffected by what an employer and an employee agree to say about what time period the severance payments do or do not apply to. That is the entire purpose of paragraph (b).

The net effect of paragraphs (a) and (b) is simple: if a severance payment is the kind of payment – unlike an employer’s contribution to insurance or a

disability-related payment – that will be treated as wages at the time it is paid to the employee, then it is treated for unemployment benefit purposes as if it was an extension of the employee's weekly salary beginning at the time his employment ended and lasting until the money runs out. It is a very simple rule.

Garcia, however, argues essentially that the department is obligated to apply payments however employers and employees want them applied, presumably in the way that will maximize or minimize benefits, depending on the agreement. Under Garcia's theory, if the employer and the employee make an agreement to delay the receipt of severance for six months so that the employee can collect six months of unemployment benefits first, then the department is obligated to apply the severance as the employer and the employee agreed. He is again mistaken.

Garcia seems to misunderstand the nature of unemployment benefits. They are not an entitlement or an employer-provided benefit like temporary disability or a pension that an employer and an employee contract for. They are state benefits from a state fund, and employers and employees have no ability to enter into contracts purporting to control the receipt of benefits. *See* Minn. Stat. §268.069, subd. 2 (2004).

This is the problem with Garcia's contract analysis, and the reason why cases such as *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) are irrelevant. He insists that the department is interfering with his contract with the employer, which it is not. He has been provided with severance pay precisely as

the contract calls for. The department has no authority to affect his receipt of severance pay, just as the contract has no authority to affect his receipt of unemployment benefits. Unemployment benefits are not part of the contract between the employer and the employee. The department is not interfering with Garcia's receipt of severance pay; it is simply applying a statute making him ineligible for unemployment benefits, which are not a matter of contract. The department is not changing or impairing anything about the contract; the parties have decided when severance is paid. The department, in turn, decides whether unemployment benefits are available, taking into account the severance that Garcia received. Under the law, unemployment benefit entitlement does not depend on the timing of severance payments. Under the law, they are applied to the period immediately after employment ends.

This has nothing to do with the *Allied Structural Steel* case, which involved the state's imposition of a requirement that employers in effect pay pensions to employees not eligible for their contracted pension programs. The employer and employee in that case contracted for what pension benefits were available; they never contracted here – and they cannot contract – for what unemployment benefits would be available. Minnesota law explicitly provides that unemployment benefits are paid from a state fund, and are not a claim against an employer. Minn. Stat. §268.069 (2004). Neither the employer nor the employee has any ability to enter into a contract controlling when unemployment benefits will be paid; thus, the payment or nonpayment of unemployment benefits cannot possibly interfere

with any contract the employer and employee have. Garcia seems to believe that he had some contractual right to receive *both* severance *and* unemployment benefits; this cannot be so. As explained below, the same result occurs when applicants receive Social Security, workers' compensation, or other benefits after the fact and have to repay unemployment benefits they received. The department is not "interfering" with Garcia's severance any more than requiring repayment of unemployment benefits when retroactive Social Security benefits are later awarded "interferes" with the applicant's entitlement to Social Security benefits.

Notably, Garcia's argument winds up being a sweeping one indeed. He goes so far as to state: "It is clear that, to the extent the contract between the parties does not provide for *receipt of* severance pay or other forms of wages, as defined by state and federal law, during a period of unemployment compensation and, in particular, where the contract specifically provides that there is no right to such payments during that time period, the provisions of §268.085, subd. 3(a) and its statutory predecessors does not apply to such payments." (emphasis added) In other words, Garcia explicitly asks the court to find that the employer and employee can entirely circumvent the entire purpose of the statutory provision allocating severance to the time after separation simply by agreeing to delay payment until after months of unemployment benefits have been collected, which is precisely the manipulation that paragraph (b) is designed to avoid by providing for the application of benefits to the period after employment ends. Garcia is wrong, and his argument is without foundation.

Ultimately, Garcia argues vociferously that the department's application of the statute fails to treat the payment the same way he and his employer treated it. But the statute does not direct the department to determine the employer and employee's intent. Just as an employer and employee may agree to consider a forced resignation to be a resignation but find that the department considers it a discharge for unemployment benefit purposes, the statute provides for the way severance pay affects unemployment benefits, no matter when the employer and employee decide it will be paid. The statute simply is not open to interpretation in this respect. "Considered wages at the time of payment" and "the period immediately following the last day of employment" both mean exactly what they say. Garcia does not ever explain how either of those phrases can plausibly be read in any way other than the way the department applied them.

It should be noted that applying payments to periods before they are received and requiring applicants to pay back benefits they received before their entitlement to those benefits was established is not in any way unusual. It is commonplace. As mentioned earlier, the same thing can happen when applicants receive retroactive Social Security benefits, workers' compensation benefits, or back pay.

Garcia mistakenly argues that *Ackerson v. Western Union Telegraph*, 234 48 N.W.2d 338 (Minn. 1951) supports his position. In fact, *Ackerson* is completely irrelevant, as it was decided before the 1965 enactment of the statutory provision specifying when severance payments were to be applied. The fact that the

Ackerson court stated that it was guided by the terms of the contract in the absence of any legal guidance regarding allocation of severance benefits to particular weeks hardly means that the way the payments are treated in the contract can override an existing statute.

The unpublished case of *Auren v. Belair Builders* (unpublished, No. A05-606, March 28, 2006) (Appendix to Department's Brief, A11-A16) has little to do with this case. In that case, the court interpreted the phrase "paid by the employer because of, upon, or after separation from employment," and it concluded that the payment was not "because of, upon, or after separation from employment." It is true that the court noted what the contract provided, but in fact, what ultimately drives the *Auren* decision was that the money was not paid by the employer, but by the union. While it is true that the payment of the money by the union and not the employer was part of the contract, the court based its decision not on the fact that the contract provided for the union to pay the money rather than the employer, but that the union *actually* paid the money rather than the employer, and thus, the plain language requiring the payment to be "paid by the employer" did not apply. The court says nowhere in *Auren* that a contractual provision can nullify an unambiguous statutory provision, nor can Garcia point to any case in which the court has suggested that it can. Simple appeals to what seems fair to Garcia, even were they convincing, would not change the result, as Minnesota law provides that there is no equitable entitlement to benefits. Minn. Stat. §268.069, subd. 3 (2004).

Garcia mentions “constitutional infirmities” created by the department’s application of the statute, but the argument is remarkably thin. The department misapplying the statute, even if it did so, would simply be a violation of statute, not a deprivation of any constitutional right. The “second” portion of the constitutional argument is simply a repeat of the first, simply arguing that the department is wrong, and therefore there must be some constitutional violation. There is no constitutional issue here. This section of the brief (Rel. Br. 18-19) rather surprisingly alleges constitutional infirmities without citing a single constitutional provision or a single case.

Garcia closes the brief with a one-paragraph equal protection argument in which he suggests that because Garcia could have been brought back for one day and the result would have been different, there is no rational basis for the statute. First, this issue is so inadequately briefed – again, not one federal equal protection case is even cited, nor is the standard of review or the legal standard explained, nor does Garcia explain what class of individuals is treated unequally as compared to what other class of individuals – that it is not clear that the court can consider it, but even if the court were to consider it, the fact of the matter is that any statute relying on the last day an individual is employed is subject to the same attack. The fact is that the statute has to identify the end of employment for a variety of reasons. Could an employer and employee manipulate many provisions of the statute by implementing one-day periods of employment? Probably. But that does not mean that all statutory provisions that are pegged to an employee’s last day of

employment have no rational basis. The statute here is perfectly rational, even if there are bizarre hypotheticals in which it might be manipulated as to have an apparently unfair result.

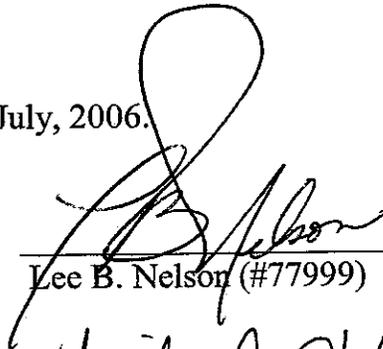
This case simply is not as novel as Garcia believes it to be. This is a straightforward application of a statute designed to provide for simple and uniform treatment of severance pay.

V. CONCLUSION

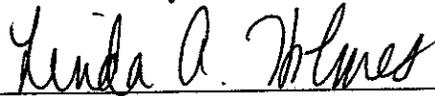
The unemployment law judge's decision that Garcia was not eligible to receive unemployment benefits from June 18, 2005 through November 11, 2005 is reasonably supported by the evidence in the record. The unemployment law judge's decision that Garcia is obligated to repay the \$10,353 in unemployment benefits to which he is not entitled is reasonably supported by the record.

The department respectfully requests that the Court affirm the agency decision.

Dated this _____ day of July, 2006.



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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) (with amendments effective July 1, 2007).