

No. A07-28

State of Minnesota
In Court of Appeals

RICHARD A CARLSON,

Relator,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

RICHARD A CARLSON
8529 ZENITH ROAD
BLOOMINGTON, MINNESOTA 55431-1550
(612) 296-2350
Relator - Pro se

Lee B. Nelson (#77999)
Katrina I. Gulstad (#0322891)
MINNESOTA DEPARTMENT OF EMPLOYMENT
AND ECONOMIC DEVELOPMENT
1ST NATIONAL BANK BUILDING
332 MINNESOTA STREET, SUITE E200
ST. PAUL, MINNESOTA 55101-1351
(651) 296-6110
Attorneys for Respondent-Department

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).

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I. LEGAL ISSUE

Under the unemployment insurance law, an applicant is ineligible for unemployment benefits for any week the applicant is incarcerated. Richard A. Carlson was sentenced under the driving while impaired (DWI) law, his fifth offense, to incarceration of one year and a day with 60 days served in the local correctional facility, and the remainder served on home detention. Is Carlson eligible for unemployment benefits while serving a portion of his incarceration on home detention?

The unemployment law judge held Carlson ineligible for unemployment benefits while on home detention because he was incarcerated.

II. STATEMENT OF THE CASE

Richard A. Carlson became unemployed, filed an application for unemployment benefits, and established a benefit account.

Carlson was paid unemployment benefits. The Department later issued a determination of ineligibility holding Carlson ineligible for the payment of unemployment benefits during a period of time that he was incarcerated. Additionally, Carlson was determined overpaid unemployment benefits paid during the period he was determined ineligible. (D1)¹ Carlson appealed and a Department unemployment law judge (ULJ) conducted a de novo evidentiary

¹ Transcript references will be indicated as "T." Exhibits in the record will be "D" for the department, with the number following.

hearing. The ULJ issued a decision finding that Carlson was ineligible for the payment of unemployment benefits for certain periods because he was incarcerated. (Appendix to Department's Brief, A3-A5) The ULJ also issued a separate decision (which is not before the Court on appeal) that Carlson was overpaid the unemployment benefits paid during the period he was ineligible and that Carlson was required to repay those benefits. (Appendix, A6-A10) Carlson requested reconsideration and upon reconsideration, the ULJ issued an order affirming his original decision. (Appendix, A1-A2)

The issue of Carlson's ineligibility while incarcerated now comes before the Court of Appeals upon a writ of certiorari obtained by Carlson under Minn. Stat. § 268.105, subd. 7 and Minn. R. Civ. App. P. 115.

III. STATEMENT OF FACTS

Richard A. Carlson became unemployed in September of 2005. (T-4) On November 4, 2005, Carlson was charged with driving while impaired in Hennepin County. (T-6) Carlson pled guilty and he was sentenced on April 7, 2006, to "one year and a day." (T-7) Carlson had four prior DWIs in the last ten years. (T 16-17)

Carlson reported to the Hennepin County Corrections Facility on April 28, 2006. (T-7) Carlson spent 60 days at that facility. (T-8) After that, Carlson was placed on home detention, with an electronic monitoring device, which he euphemistically calls "an electric leash." (T-9)

Carlson was allowed "work release" and obtained employment which he started on July 31, 2006. (T-10)

Carlson was on home detention through at least December 18, 2006, he receiving a one-third credit for "good time." (T-7, 16, D-5)

IV. STANDARD OF REVIEW

The legislature codified the standard of review at Minn. Stat. § 268.105, subd. 7(d) (2006) 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.

V. ARGUMENT FOR DISQUALIFICATION

The ultimate question in this case is whether Carlson is ineligible for unemployment benefits while serving his sentence for DWI on home detention. Minn. Stat. § 268.085, subd. 2, provides in part that an applicant shall not be eligible to receive unemployment benefits for any week:

...(3) that the applicant is incarcerated or performing court ordered community service."

As to whether he was incarcerated while in the Hennepin County Corrections Facility, Carlson testified:

“Oh yeah, I was incarcerated. Yeah, no doubt about it.” (T-15)

Unquestionably, during the 60 days that Carlson was in the Hennepin County Corrections Facility, he is ineligible for the payment of unemployment benefits under the statute quoted above. The only question this case presents is whether he is eligible for unemployment benefits from June 26, 2006 through July 22, a period of home detention for which he requested and was paid unemployment benefits.

The applicable driving while impaired (DWI) law is set out in Minn. Stat. §169A.275, subds. 4(a) and (b), which deal with a fifth offense or more. Carlson was sentenced under that provision.² That law requires that:

“(1) a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility;...

(b) The court may order that the person serve the remainder of the minimum penalty under paragraph (a)(1), clause (1) on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention..”

The above statute allows Carlson to serve his incarceration, in part, on home detention. Under that law, Carlson is considered in incarceration while on home detention.

² Although Carlson’s November 4, 2005 offense was a felony, (T-17) apparently Minn. Stat. §169A.276, subd. 2, was used to apply the sentence under §169A.275, subd. 4.

Because Carlson is considered, under the driving while impaired statute, in incarceration while on home detention he must be considered in incarceration for purposes of Minn. Stat. §268.085, subd. 2, clause (3), and he is therefore ineligible for the payment of unemployment benefits from June 26 through July 22, 2006.

Carlson does not argue that he was not incarcerated during this period but simply argues that he was available for work. Availability for work is not the issue. Whether he was available for work is irrelevant. The statute specifically provides that if he is incarcerated he is ineligible, regardless of whether he might be considered available for work. The availability for work requirement is set out at Minn. Stat. § 268.085, subd. 1, clause (4). At issue in this proceeding is Minn. Stat. § 268.085, subd. 2, clause (3). In order to be considered eligible for the payment of unemployment benefits, all eligibility requirements must be met. Minn. Stat. § 268.069, subd. 1, clause (3), provides that the commissioner shall pay unemployment benefits to an applicant who “has met *all* of the ongoing eligibility requirements under Sections 268.085 and 268.086;” (emphasis added)

Overpayment of unemployment benefits.

While Carlson did not appeal the separate ULJ’s decision on an overpayment of unemployment benefits, because reference was made to the overpayment in the transcript and Carlson referenced it in his statement of the case filed with the Court of Appeals on January 5, 2007, a short explanation is provided.

Carlson was paid unemployment benefits and later a determination of ineligibility was issued. Under, Minn. Stat. § 268.101, subd. 6, if a determination of ineligibility is issued for periods the applicant has already been paid, that is considered an overpayment of benefits.

The original Department determination of overpayment imposed a penalty on Carlson for false statements; however, the ULJ eliminated any penalty and simply held that Carlson must return the unemployment benefits paid to him during the period of time he was ineligible.

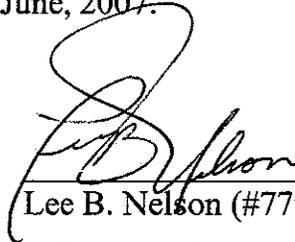
Under Minn. Stat. § 268.18, subd. 1, an applicant who has received unemployment benefits for a period he is later determined ineligible is required to repay those unemployment benefits to the Minnesota Unemployment Insurance Trust Fund. Should Carlson prevail on the issue of ineligibility while serving his sentence on home detention, the overpayment will be voided. Affirmation by the Court of the ULJ's decision on Carlson's eligibility means he is overpaid unemployment benefits which he must repay. There is nothing for the Court to decide on the overpayment question.

VI. CONCLUSION

The Unemployment Law Judge found that Richard A. Carlson was incarcerated during the period April 28, 2006 through July 22, 2006, and was therefore ineligible for the payment of unemployment benefits during that time, under the specific applicable statutory provision.

The Department respectfully requests the Minnesota Court of Appeals to affirm that decision as it is in accord with the evidence and the law.

Dated this 4th day of June, 2007.



Lee B. Nelson (#77999)



Katrina I. Gulstad (#0322891)

Department of Employment and
Economic Development
1st National Bank Building
332 Minnesota Street, Suite #200
Saint Paul, Minnesota 55101-1351
(651) 296-6110

Attorneys for Respondent-Department