

No. A09-202

---

State of Minnesota  
In Court of Appeals

MICHELE M. SODERQUIST,

*Relator,*

vs.

UNIVERSAL SERVICES TELECOM TECH INC,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

---

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

---

MICHELE M. SODERQUIST  
8430 CALVIN COURT  
INVER GROVE HEIGHTS, MINNESOTA  
55076-6135  
(651) 451-7581  
*Relator - Pro se*

UNIVERSAL SERVICES TELECOM TECH INC  
680 HALE AVENUE NORTH, SUITE 240  
OAKDALE, MINNESOTA 55126-7561  
(651) 768-0611  
*Respondent- Employer -Pro se*

Lee B. Nelson (#77999)  
Amy R. Lawler (#0388362)  
MINNESOTA DEPARTMENT OF EMPLOYMENT  
AND ECONOMIC DEVELOPMENT  
1<sup>ST</sup> NATIONAL BANK BUILDING  
332 MINNESOTA STREET, SUITE E200  
ST. PAUL, MINNESOTA 55101-1351  
(651) 259-7117  
*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).

## TABLE OF CONTENTS

<b>I. LEGAL ISSUE .....</b>	<b>1</b>
<b>II. STATEMENT OF THE CASE.....</b>	<b>1</b>
<b>III. STATEMENT OF FACTS.....</b>	<b>2</b>
<b>IV. DEPARTMENT'S RELATIONSHIP TO THE CASE .....</b>	<b>3</b>
<b>V. ARGUMENT.....</b>	<b>4</b>
<b>A. LIMITATION OF THIS BRIEF.....</b>	<b>4</b>
<b>B. STANDARD OF REVIEW .....</b>	<b>4</b>
<b>C. ARGUMENT FOR INELIGIBILITY (AFTER FIVE WEEKS OF BENEFITS HAVE     BEEN PAID) .....</b>	<b>5</b>
<b>VI. CONCLUSION.....</b>	<b>8</b>
<b>APPENDIX.....</b>	<b>10</b>

## TABLE OF AUTHORITIES

### CASES

<i>Khabani v. Red Owl Stores</i> , 392 N.W.2d 698 (Minn. App. 1986) -----	7
<i>McIntire v. State</i> , 458 N.W.2d 714 n.2 (Minn. App. 1990), review denied (Minn. Sept 28, 1990) -----	4
<i>Melina v. Chaplin</i> , 327 N.W.2d 19 (Minn. 1982) -----	4
<i>Norris Grain Co. v. Seafarers' International Union</i> , 232 Minn. 91, 46 N.W.2d 94, 105 (1950) -----	7
<i>State v. Thompson</i> 754 N.W.2d 352 (Minn. 2008) -----	4, 5

### STATUTES

Minn. Stat. § 116J.401, subd. 1(18) (2004) -----	3
Minn. Stat. § 268.069, subd. 2 (2008) -----	3
Minn. Stat. § 268.069, subd. 3 (2008) -----	5, 7
Minn. Stat. § 268.07, subd. 2 (2008) -----	7
Minn. Stat. § 268.085, subd. 9 (2008) -----	5, 6, 8
Minn. Stat. § 268.105, subd. 7 (2008) -----	2, 3, 4
Minn. Stat. § 645.08 (2008) -----	6
Minn. Stat. § 645.16 (2008) -----	7

### OTHER AUTHORITIES

American Heritage College Dictionary, third edition (2000) -----	6
Minn. Laws 2008, Ch. 300, Sec. 13 -----	6

### RULES

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

## **I. LEGAL ISSUE**

Under the law, where the parent of a business owner, who is also an employee of the business, that parent employee is only entitled to limited unemployment benefits. Specifically, the employee is limited to five weeks of unemployment benefits unless she had a certain amount of earnings in each of the previous 16 calendar quarters. Michele M. Soderquist's daughter owns 50 percent of the employer corporation, and Soderquist admits that, in one calendar quarter, she was not paid the threshold amount. Is Soderquist limited to five weeks of unemployment benefits?

Unemployment Law Judge Matthew St. Martin held that Soderquist did not have wages paid to her of the requisite amount in each of 16 calendar quarters prior to the effective date of her benefit account, and therefore she was limited to five weeks of unemployment benefits.

## **II. STATEMENT OF THE CASE**

Michele Soderquist separated from employment with Universal Services Telecom Tech Inc., filed an application for unemployment benefits with the Department of Employment and Economic Development, and established a benefit account effective September 21, 2008. The Department issued an initial determination of ineligibility, holding that Soderquist was limited in the amount of unemployment benefits payable because she was the parent of a business owner (that determination contains an outdated citation to the old business owners

statute).<sup>1</sup> Soderquist filed an appeal, and a de novo hearing was held by Unemployment Law Judge Matthew St. Martin. The ULJ issued a decision holding that Soderquist did not meet the statutory requirement of having a certain amount of wages paid in each of 16 prior calendar quarters, and that she was therefore limited to five weeks of unemployment benefits under the law.<sup>2</sup> Soderquist requested reconsideration and the ULJ issued an order affirming his decision.<sup>3</sup>

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

Also currently pending before the Court is the case of *Boyd Christenson v. Christenson and Associates*, A09-45, which involves application of the same statutory provision at issue here. The Department's brief in that matter was filed on June 1, 2009.

### **III. STATEMENT OF FACTS**

Michele Soderquist was employed by Universal Services Telecom Tech Inc. from April 24, 2004, until September 22, 2008.<sup>4</sup> Soderquist's daughter owns

---

<sup>1</sup> (Ex1) Transcript references will be indicated as "T." Exhibits in the record will be "Ex" for Exhibits, with the exhibit number following.

<sup>2</sup> Appendix to Department's Brief, A5-A8

<sup>3</sup> Appendix, A1-A4

<sup>4</sup> T.9

50 percent of the employer corporation.<sup>5</sup>

During the first quarter of 2005, Soderquist had wages paid to her from Universal Services of \$6,923.10.<sup>6</sup>

Soderquist filed an application for unemployment benefits and established a benefit account effective September 21, 2008.<sup>7</sup> Soderquist was determined to have a weekly benefit amount of \$450. Soderquist was paid \$2,250 in unemployment benefits on her regular state benefit account.

#### **IV. DEPARTMENT'S RELATIONSHIP TO THE CASE**

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>8</sup> Unemployment benefits paid are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, not from the employer or employer funds.<sup>9</sup> The Department's interest therefore carries over to the Court of Appeals' interpretation and application of the Minnesota Unemployment Insurance Law. So, the Department is considered the primary responding party to any judicial action involving an Unemployment Law Judge's decision.<sup>10</sup>

---

<sup>5</sup> T.10, 11, E-4, E-5

<sup>6</sup> T.11, 12; Return 2-B, 5-page fax sent to the ULJ by Universal Services shortly after the hearing, discussed at T.19.

<sup>7</sup> T.10

<sup>8</sup> Minn. Stat. § 116J.401, subd. 1(18).

<sup>9</sup> Minn. Stat. § 268.069, subd. 2.

<sup>10</sup> Minn. Stat. § 268.105, subd. 7(e).

## V. ARGUMENT

### A. LIMITATION OF THIS BRIEF

The argument set out below is limited to a response to the arguments raised by Soderquist. While Soderquist appears pro se, nonetheless her brief is the limit of the issues. As the Supreme Court made clear in *Melina v. Chaplin*, issues not briefed on appeal are waived.<sup>11</sup> And as the Court of Appeals held in *McIntire v. State*, issues not raised in the relator's brief cannot be revived in a reply brief.<sup>12</sup>

### B. STANDARD OF REVIEW

The standard of review as set forth in the statute is:

(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.<sup>13</sup>

The only issue in this case is the application of the statute to the undisputed facts. The Supreme Court in *State v. Thompson* stated that statutory interpretation

---

<sup>11</sup> 327 N.W.2d 19, 20 (Minn. 1982)

<sup>12</sup> 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), review denied (Minn. Sept 28, 1990)

<sup>13</sup> Minn. Stat. § 268.105, subd. 7(d).

and application is a question of law that the courts review de novo.<sup>14</sup>

**C. ARGUMENT FOR INELIGIBILITY (AFTER FIVE WEEKS OF BENEFITS  
HAVE BEEN PAID)**

There is no equitable entitlement to unemployment benefits under the law.<sup>15</sup>

An applicant's entitlement is only in accordance with the statute, and the statute contains virtually hundreds of limitations and exclusions on benefit payments.

There is no factual dispute in this matter. Soderquist concedes that the wages paid to her by Universal Services for the first quarter of 2005 was \$6,923.10. There is no question that Soderquist's daughter owns 50 percent of the employer corporation. There is no question that Soderquist's benefit account was established effective September 21, 2008. The applicable statute at issue provides that:

Subd. 9. **Business owners.** Wage credits from an employer may not be used for unemployment benefit purposes by any applicant who:

(1) individually, jointly, or in combination with the applicant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employer; or

(2) is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employer.

This subdivision is effective when the applicant has been paid five times the applicant's weekly unemployment benefit amount in the current benefit year. This subdivision does not apply if the applicant had wages paid of \$7,500 or more from the employer covered by this subdivision *in each of the* 16 calendar quarters prior

---

<sup>14</sup> 754 N.W.2d 352, 355 (Minn. 2008)

<sup>15</sup> Minn. Stat. §268.069, subd. 3

to the effective date of the benefit account.<sup>16</sup> (*emphasis added*)

The 16 calendar quarters prior to the effective date of Soderquist's application for unemployment benefits was the period July 1, 2004, to June 30, 2008. During one quarter of that period, the first quarter of 2005, she was paid wages of \$6,923.10. Soderquist was not paid wages of \$7,500 in each of the 16 calendar quarters.

Statutory terms are given their plain ordinary meaning unless specifically defined otherwise.<sup>17</sup> "Each" means, in the dictionary "being one of two or more considered individually."<sup>18</sup> This statute is simple and straightforward and means exactly what it says. \$7,500 in wages must be paid in every single quarter in the prior 16. That amount was not paid in Soderquist's case. Close doesn't count.

Soderquist essentially argues that it is unclear what the statute means, and that this Court should determine if an applicant had wages paid in each quarter of \$7,500 by taking an average. But an average is directly contrary to the meaning of the phrase "in each of the..." For example, if you told two children that you would pay each of them 50 cents to do something, and they each do the requested task, you can't pay one 25 cents and the other 75 cents and rightfully claim that each was paid 50 cents.

---

<sup>16</sup> Minn. Stat. §268.085, subd. 9. This current version of the statute is applicable to applications for unemployment benefits filed effective on or after July 6, 2008. See Minn. Laws 2008, Ch. 300, Sec. 13.

<sup>17</sup> Minn. Stat. §645.08

<sup>18</sup> American Heritage College Dictionary, third edition (2000).

Averages are used in the statute, most significantly when computing a weekly benefit amount. The statute makes that very clear, and specifically sets out the formula for computing the average.<sup>19</sup> The Legislature is capable of requiring the Department to compute an average. The statute in question would have called for an average if that was what the Department was required to do.

Soderquist argues that the result of the statute is inequitable, but as set out above, there is no equitable allowance of unemployment benefits.<sup>20</sup> Soderquist quotes Minn. Stat. §645.16 in her brief, including the portion of law that provides that the plain meaning of the statute cannot be ignored under the guise of following the spirit. Yet that is what she asks the Court to do. In *Khabani v. Red Owl Stores*, the Court of Appeals, addressing the application of a subdivision of the unemployment insurance law, wrote:

...Because the language of section 268.08, subd. 3 is free from ambiguity, this court must enforce the statute literally as it is read. While we are not unmindful of the implications of this decision, we are guided by the words of the Supreme Court in *Norris Grain Co. v. Seafarers' International Union*, 232 Minn. 91, 109-10, 46 N.W.2d 94, 105 (1950):

Neither the wisdom of the laws nor their adequacy to accomplish a desired purpose may be taken into consideration by courts in determining what interpretation the laws should have; we must give effect to them as they are, regardless of our personal opinion regarding their adequacy.

Any change must come from the legislature.<sup>21</sup>

---

<sup>19</sup> Minn. Stat. §268.07, subd. 2

<sup>20</sup> Minn. Stat. §268.069, subd. 3

<sup>21</sup> 392 N.W.2d 698, 700 (Minn. App. 1986)

There is a very specific and fairly complex reason why the statute is written the way it is, although that is not readily apparent.<sup>22</sup> But analysis and consideration of that background is irrelevant to the application of the statute because the statute is clear and unambiguous. Soderquist is entitled to receive total regular state unemployment benefits of five times her weekly benefit amount and she has been paid that amount in full.

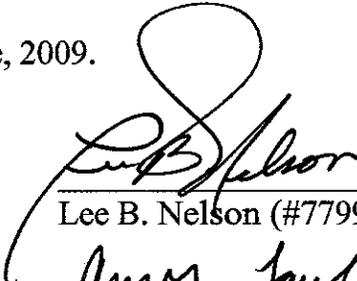
## **VI. CONCLUSION**

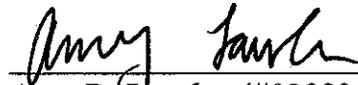
The statute in question, Minn. Stat. §268.085, subd. 9, and its application to Soderquist is clear and free from all ambiguity. The Department requests that the Court of Appeals affirm the decision of Unemployment Law Judge Matthew St. Martin.

---

<sup>22</sup> The Unemployment Law Judge's comment in his decision and order on reconsideration regarding the Legislature was both inappropriate and uninformed. See attached affidavit of ULJ Matthew St. Martin, Appendix A-9

Dated this   1   day of June, 2009.

  
\_\_\_\_\_  
Lee B. Nelson (#77999)

  
\_\_\_\_\_  
Amy R. Lawler (#0388362)

Department of Employment and  
Economic Development  
1<sup>st</sup> National Bank Building  
332 Minnesota Street, Suite E200  
Saint Paul, Minnesota 55101-1351  
(651) 259-7117

Attorneys for Respondent Department