

Court of Appeals of the State of Minnesota.

Cliff Voge, Relator

versus

Pacioli Operations Inc., Respondent
and
Department of Employment and Economic Development, RespondentNo. A10-496.
July 6, 2010.

Relator's Informal Brief and Appendix

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STATEMENT OF THE CASE

Relator Cliff Voge appeals the decision represented as Issue Identification Number 24055636 – 2 and dated on 2/17/2010 and related actions taken in administering his claim for extended unemployment benefits. Such actions are in conflict with the Emergency Unemployment Compensation (EUC) and American Recovery and Reinvestment Act (ARRA) of 2009, as well as the stated purpose of the Minnesota Unemployment Insurance Program.

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).

STATEMENT OF FACTS:

In June, 2008 Cliff Voge completed a contract consulting assignment that lasted a little over six months and was arranged by his employer, Pacioli Companies. Mr. Voge had worked as a senior accountant/senior financial analyst on several contract consulting assignments arranged through Pacioli Companies beginning in November, 2004. He also held a part-time weekend job as a Certified Patrol Officer through Hannon Security Services, which he began in January, 2007 in order to afford the expensive health insurance premiums from having to purchase his own individual medical insurance policy. Mr. Voge's full-time employment through Pacioli Companies accounted for 85% of his total wages; while his part-time employment accounted for the remaining 15%.

Subsequently, Mr. Voge applied for unemployment benefits and began looking for full-time work, while Pacioli Companies presumably also looked for another contract consulting assignment. The Department of Employment and Economic Development indicated that Mr. Voge qualified for weekly unemployment benefits of \$566 (an amount equivalent to approximately 36% of his full-time employment salary). However, because of Mr. Voge's part-time employment earnings, his weekly benefit payments on an average week were reduced to \$412 (approximately 26% of his full-time salary).

In response to worsening economic conditions and rising unemployment rates the Federal Government passed legislation to extend unemployment benefits, such as the Emergency Unemployment Compensation (EUC) and the American Recovery and Reinvestment Act of 2009 (ARRA). Mr. Voge collected unemployment compensation benefits through mid-October, 2009. Besides looking for full-time employment, he took several college courses and specialized training courses paid for through the Dislocated Workers Program.

When attempting to complete his weekly request for benefits online, he was directed to submit a new application for unemployment. The new application gathered new earnings information; and resulted in calculating a revised benefit amount, which utilized earnings from Mr. Voge's last week of employment at Pacioli Companies and earnings from his part-time weekend employment for a period of one year. The benefit amount calculated from the new application amounted to only \$198 per week (approximately 12% of his previous full-time salary). However, because of his part-time employment earnings, the weekly benefit amount was reduced to zero.

Mr. Voge contacted the Minnesota Bar Association, who helped him locate and obtain consultation from an attorney versed in unemployment law. The attorney stated that requiring a new application for extended unemployment benefits and the resulting reduction of benefits to zero made no sense, and recommended that Mr. Voge appeal this decision by the Department of Employment and Economic Development. The case was heard during a first level hearing via telephone by a person designated as an unemployment law judge by the Department of Employment and Economic Development, and the initial decision was apparently reviewed by the same person in response to a request for reconsideration by Mr. Voge.

LEGAL ARGUMENT

As stated by the Minnesota Unemployment Insurance Program (Chapter 268.03, Subdivision 1), the stated purpose of creating the Minnesota unemployment insurance program” arose out of concern(s) about economic insecurity resulting from the involuntary unemployment of workers. Providing a temporary partial wage replacement to assist the unemployed worker to become reemployed is considered as promoting the public good. The underlying principle of promoting the public good, however, does not appear to be of concern when administering extended benefits. Additionally, the administration of extended unemployment benefits appears to penalize unemployed people who work part-time (as was the case with Mr. Voge) or who accept any short-term employment assignments.

Minnesota Statutes Section 268.115, Subdivision 4, entitled: Weekly extended unemployment benefit amount, states that “the weekly unemployment benefit amount shall be the same as the weekly unemployment amount of regular unemployment benefits.” The weekly unemployment benefit amount for Mr. Voge’s regular unemployment benefits was determined to be \$566 versus the \$198 resulting from recalculating and requiring the use of a new benefit year.

The weekly wages regularly earned by Mr. Voge at his part-time weekend job (15% of his total earnings prior to becoming unemployed from his full-time employment which provided his livelihood) total only \$278.20. The revised calculation of benefits combined with his low part-time earnings resulted in reducing the revised \$198 unemployment benefit amount to zero. The net pay from Mr. Voge’s part-time position does not even cover his housing costs—not to mention groceries and food, utilities (gas, electricity, water/sewer/garbage/recycling), phone, vehicle/transit, and other living expenses. Obviously, Mr. Voge was not able to continue using his part-time weekend earnings for its originally intended purpose of paying for his medical insurance premiums.

Since becoming unemployed from his full-time employment (which as mentioned previously provided his livelihood), Mr. Voge has not been able to afford to hire a plumber or carpenter to make necessary repairs for maintaining the modestly priced foreclosure home that he purchased. Continuing down the same path that Mr. Voge and the property are currently on will ultimately result in foreclosure, as the property cannot be sold at a fair price without fixing such problems.

Minnesota Statutes Section 268.115, Subdivision 1(7) was referenced in the “Reason for Decision” section of the answer to Mr. Voge’s appeal, indicating that Mr. Voge was not an “exhaustee”. Although the exact requirements for being an “exhaustee” are not readily apparent, this requirement exemplifies how the administration of the Minnesota unemployment insurance program, with regard to extended benefits, penalizes unemployed people for either working part-time (as Mr. Voge did) or for accepting any work assignments other than full-time long-term employment.

With the Federal Government approving various extensions in benefits as the economy and unemployment worsened, it appeared that benefits should have been available for unemployed people who needed them for up to 86 weeks (or more). Rather than provide Mr. Voge with an extension of unemployment benefits as authorized by the Emergency Unemployment

Compensation (EUC) and the American Recovery and Reinvestment Act of 2009 (ARRA); an entirely new unemployment application claim was processed. The Department of Employment and Economic Development indicated that Mr. Voge now qualified for reduced weekly unemployment benefits of an amount which was approximately 12% of his full-time employment salary.

Requiring a revised calculation of benefits during severe economic times appears to be in direct conflict with the reason for approving extended benefits. During less severe economic times, unemployed people (along with employed people) have more viable options. Whereas during the current economic turmoil, most of the usual more-readily available options no longer exist. The subject decision of requiring a new unemployment application and the resulting administration of unemployment compensation benefits penalized Mr. Voge for continuing to work at his low-paying part-time weekend job while unemployed from his full-time occupation. The subject decision and administrative procedures, in effect, deny extended unemployment benefits to Mr. Voge as authorized by the aforementioned laws enacted by the Federal Government to provide extended unemployment benefits during these difficult economic times.

As of October, 2009, when Mr. Voge was required to complete a new unemployment application, his employment situation had not changed since the end of his most recent full-time assignment with Pacioli Companies. He had not located full-time employment; and continued to work at his low-paying part-time weekend job. In short, he was just as "unemployed" at this point in time as when he first applied for unemployment benefits in June, 2008. Unfortunately, his financial position had deteriorated substantially from having to exist on "too little for too long".

Applying the benefits of 20/20 hindsight toward the deteriorating economic conditions and applying for unemployment (and extended unemployment) benefits, upon learning in advance that his contract consulting assignment was going to end, Mr. Voge should have ended his part-time weekend employment job immediately and avoided being penalized for continuing such part-time work while having to apply for unemployment benefits. Eliminating earnings from his part-time employment would have permitted transferring responsibility for payment of his expensive medical insurance payments to a State of Minnesota paid program many months sooner. The need for incurring vehicle and gas expenses (from commuting to this part-time job over the past two years) would also have been eliminated. By ending his part-time employment before attempting to draw unemployment benefits, Mr. Voge would have been able to avoid being penalized further from having his tentative extended unemployment benefits reduced to zero from mid-October, 2009 forward.

Besides being rewarded with entitlement to collecting full unemployment benefits (amounting to an additional \$154 per week from July, 2008 through mid-October, 2009 or over \$10,000), it appears that Mr. Voge would also have been considered entitled for continued payment of \$566 per week in extended unemployment benefits from mid-October, 2009 forward for many additional months (of which the exact timeframe has yet to be determined by the legislature with an amount accumulating to more than \$11,000).

Besides the monetary benefits that would have been bestowed upon Mr. Voge had he successfully applied what he learned through his aforementioned 20/20 hindsight, he also would have avoided the effort of working an overnight "graveyard" shift every Friday and Saturday night for the past two years for little to no net financial benefit.

The aforementioned circumstances experienced by Mr. Voge raise the question of: "Why work?"

CONCLUSION

For the foregoing reasons, Relator Cliff Voge respectfully requests that the Court reverse the Unemployment Law Judge decision and award Mr. Voge with extended unemployment benefits which are in line with the stated purpose and spirit of legislation embodied in the Emergency Unemployment Compensation (EUC) and American Recovery and Reinvestment Act (ARRA) of 2009.

A handwritten signature in cursive script, appearing to read "Cliff Voge".