

No. A11-1888

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State of Minnesota  
**In Court of Appeals**

**SUPERIOR DEVELOPMENT, INC.,**

*Relator,*

vs.

**DANIEL HAUGEN,**

*Respondent,*

and

**DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,**

*Respondent.*

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**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).

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## **Legal Issue**

Under the law, an individual who quits employment for a good reason caused by his employer is eligible for unemployment benefits, and the benefits paid will be used in computing the future tax rate of the employer. Daniel Haugen quit his employment with Superior Development, Inc. (“Superior”) because his weekly hours (at \$15 per hour) were cut by Superior from 40 to 24, resulting in a corresponding decrease in his weekly wages. Did Haugen have a good reason caused by Superior to quit the employment?

Unemployment Law Judge (“ULJ”) Richard Reeves held that Haugen quit employment with Superior for a good reason caused by that employer, that he was eligible for unemployment benefits, and that benefits paid would be used in computing the future tax rate of Superior.

## **Statement of the Case**

Haugen established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”) in April of 2011, when his hours were cut.<sup>1</sup> Haugen continued to work for Superior until June 29, 2011, when he quit his employment. A Department clerk determined that Haugen

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<sup>1</sup> Haugen collected partial weekly benefits for some of the weeks from mid-April through June. Superior contested the question of whether those partial weekly benefits would be used in determining its future tax rate, calling into question Minn. Stat. § 268.047, subd. 2(3). That was the subject of a separate hearing before ULJ Bryan Eng held on June 29, 2011. The ULJ there held that the benefits paid to Haugen while working reduced hours at Superior would be used in computing its future tax rate. That decision is not involved in this appeal.

was ineligible for unemployment benefits after June 29, because he quit his employment, and did not meet any of the statutory exceptions for quitting.<sup>2</sup> Haugen appealed that determination, and ULJ Richard Reeves held a de novo hearing. ULJ Reeves found that Haugen quit with a good reason caused by Superior, and that he was therefore eligible for benefits after June 29, and that benefits paid would be used in computing the future tax rate of Superior.<sup>3</sup> In accordance with the statute, unemployment benefits were paid.<sup>4</sup> Superior requested reconsideration, and the ULJ affirmed his decision.<sup>5</sup>

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

### **Haugen's Benefits Have Vested**

Relator asks that the Court “conclude that Haugen is ineligible to receive unemployment benefits.”<sup>6</sup> But Relator overlooks Minn. Stat. § 268.105, subd. 3a(a) and (c). Haugen’s entitlement to unemployment benefits has vested.<sup>7</sup> What remains is whether the benefits paid to Haugen will be used in computing the

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<sup>2</sup> E-1. (Transcript references will be indicated “T.” Exhibits in the record will be “E” with the number following.)

<sup>3</sup> Appendix to the Department’s brief, A6-A11.

<sup>4</sup> Minn. Stat. § 268.105, subd. 3a(a).

<sup>5</sup> Appendix, A1-A5.

<sup>6</sup> Relator’s brief, p. 48.

<sup>7</sup> Haugen’s benefit year expires on April 14, 2012. *See* Minn. Stat. § 268.035, subd. 6, § 268.07, subd. 3b(d), and § 268.085, subd. 1(2).

future unemployment tax rate of Superior.<sup>8</sup> If the Court holds that Haugen quit without a good reason caused by Superior, the result is that the unemployment benefits paid Haugen after June 29 will not be used in computing the future tax rate (the “experience rating” component of the tax rate) of Superior. If the Court affirms the ULJ, the benefits paid will be used in computing Superior’s future unemployment tax rate.

### **Department’s Relationship to the Case**

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>9</sup> As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds.<sup>10</sup> This was later codified.<sup>11</sup> In 2011, the Department paid out over \$940 million in regular state unemployment benefits, and an additional \$930 million in federally funded extended benefits, to over 295,000 Minnesotans. The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the Minnesota Unemployment Insurance Law. The Department is

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<sup>8</sup> Minn. Stat. § 268.047, subd. 1 and subd. 3(2).

<sup>9</sup> Minn. Stat. § 116J.401, subd. 1(18).

<sup>10</sup> 545 N.W.2d 372, 376 (Minn. 1996). *See also Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951). Unemployment benefits are paid from state funds, even though taxes paid by employers helped create the fund.

<sup>11</sup> Minn. Stat. § 268.069, subd. 2.

thus considered the primary responding party to any judicial action involving an unemployment law judge's decision.<sup>12</sup>

### **Statement of Facts**

Daniel Haugen was hired in August 2008 to be the property manager for 16 rental houses owned by Superior Development, Inc.<sup>13</sup> His duties included renting out the properties, collecting rents, and everything associated with that, including painting, cleaning, and doing minor repairs.<sup>14</sup> Haugen was paid \$15 per hour, plus a two percent monthly commission on the rents, and it was anticipated that he would work 28 hours per week.<sup>15</sup> He filled out his own timesheet and submitted it weekly.<sup>16</sup>

Within a few weeks of starting, Superior, it being dissatisfied with a management company's handling of its 18 unit apartment building, asked Haugen if he would take over the management of the apartment building in addition to management of the rental houses, and he agreed.<sup>17</sup> Haugen's hours increased to 40 hours per week.<sup>18</sup> Haugen spent half his time dealing with the apartment building.<sup>19</sup>

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<sup>12</sup> Minn. Stat. § 268.105, subd. 7(e).

<sup>13</sup> T. 9, 35, 39.

<sup>14</sup> T. 9, 28.

<sup>15</sup> T. 10.

<sup>16</sup> T. 11.

<sup>17</sup> T. 10, 35, 39.

<sup>18</sup> T. 10.

<sup>19</sup> T. 35.

Superior hired Haugen knowing he was also an attorney, and they entered into a separate agreement where Haugen, as an independent contractor, would do Superior's legal work, such as handling court appearances involving evictions.<sup>20</sup> As Superior's president acknowledged, as a corporation, Superior is required to have an attorney represent it in court for evictions.<sup>21</sup> Haugen billed Superior separately for any legal work he did.<sup>22</sup>

Haugen put in 40 hours a week as a property manager from September 2008 until he was approached in late 2010 and asked to reduce his hours to 32 a week.<sup>23</sup> This was done for financial reasons.<sup>24</sup> Haugen's weekly hours gradually crept up again to 40.<sup>25</sup>

In mid-April, because it was "bleeding" – it having lost over \$150,000 on its rental properties – Superior ordered Haugen to reduce his hours to 24 hours a week.<sup>26</sup> Haugen's duties and responsibilities remained the same.<sup>27</sup> Haugen couldn't do the work expected of him in 24 hours a week.<sup>28</sup>

When his hours were reduced to 24 hours a week, Haugen had a meeting with William Mellgren, Superior's vice president, and told him "he didn't think he

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<sup>20</sup> T. 24, 27, 30.

<sup>21</sup> T. 27. Note – Rule 603 of the Housing Court Rules do allow a non-attorney appearance but that only applies in Hennepin and Ramsey Counties. We don't know in which county(s) the properties involved here are located.

<sup>22</sup> T. 30.

<sup>23</sup> T. 11.

<sup>24</sup> T. 36.

<sup>25</sup> T. 12.

<sup>26</sup> T. 13, 29.

<sup>27</sup> T. 13.

<sup>28</sup> Mellgren's testimony at T. 33, 34.

could make it on 24 hours a week.”<sup>29</sup> Mellgren thought Haugen would be quitting, but because he didn’t have anything else lined up, Haugen decided to give it a try and see if he could make it.<sup>30</sup>

Haugen, in mid-April, had applied for unemployment benefits.<sup>31</sup> Based upon his four quarter base period wages from Superior, he was determined to have a weekly unemployment benefit amount of \$365, which is 50 percent of his average weekly wages.<sup>32</sup> Haugen was paid unemployment benefits in those weeks his earnings were less than \$365, but those weeks where his earnings were above that amount, he was not eligible for benefits.<sup>33</sup> He was not eligible when he worked 25 hours a week – which he did one week – and a week he worked 28 hours – which he did one week – and he was ineligible in those weeks he was paid commissions.<sup>34</sup> From mid-April until near the end of June, Haugen was paid just over \$1,000 in unemployment benefits.<sup>35</sup>

On June 29, Haugen quit the employment “mainly” because his hours had been reduced and that resulted in a decrease in his weekly pay.<sup>36</sup>

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<sup>29</sup> T. 31. *See also* T. 18, 29, 33.

<sup>30</sup> T. 31, 37.

<sup>31</sup> T. 41.

<sup>32</sup> T. 41. *See* Minn. Stat. § 268.07, subd. 2(a).

<sup>33</sup> T. 42, 44.

<sup>34</sup> T. 42, 44. For example, rents amounted to \$29,786 in June, the computed commission would be \$595 (T. 17).

<sup>35</sup> T. 42.

<sup>36</sup> T. 33, 34.

## 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 Superior's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>37</sup>

The Supreme Court held in *Stagg v. Vintage Place* that it views the ULJ's "factual findings in the light most favorable to the decision," and that it will not disturb the findings when the evidence substantially sustains them.<sup>38</sup> "Substantial evidence" is the relevant evidence that "a reasonable mind might accept as adequate to support a conclusion."<sup>39</sup>

The Court of Appeals has stated on a number of occasions that why an individual quit employment is a question of fact for the ULJ to determine.<sup>40</sup> And in *Nichols v. Reliant Engineering Manufacturing, Inc.*, the Court of Appeals made clear that whether an employee quit with a good reason caused by the employer is a legal question, which the Court reviews de novo.<sup>41</sup>

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<sup>37</sup> Minn. Stat. § 268.105, subd. 7(d) (2010).

<sup>38</sup> 796 N.W.2d 312, 315 (Minn. 2011) (citing *Jenkins v. Am. Express*, 721 N.W.2d 286, 289 (Minn. 2006)).

<sup>39</sup> *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

<sup>40</sup> *Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380, 382 (Minn. App. 1986) and *Midland Electric Inc. v. Johnson*, 372 N.W. 2d 810, 812 (Minn. App. 1985).

<sup>41</sup> 720 N.W. 2d 590, 594 (Minn. App. 2006).

## **Argument**

### **1. Haugen quit for a good reason caused by Superior.**

That Haugen quit his employment with Superior on June 29, 2011, is undisputed. But because Haugen's benefits have vested, the question remains whether he quit with a good reason caused by Superior as that controls whether the benefits paid to him will affect the future unemployment tax rate of Superior.<sup>42</sup>

Minn. Stat. § 268.047 provides in part:

**Subd. 1. General rule.** Unemployment benefits paid to an applicant,..., will be used in computing the future tax rate of a taxing base period employer...except as provided in subdivisions 2 and 3...

Subdivision 3 provides in part:

**Subd. 3. Exceptions for taxing employers.** Unemployment benefits paid will not be used in computing the future tax rate of a taxing base period employer when:

\* \* \*

(2) the applicant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer...

The statute in turn defines a good reason caused by the employer:

**Subd. 3. Good reason caused by the employer defined.**

- (a) A good reason caused by the employer for quitting is a reason:
- (1) that is directly related to the employment and for which the employer is responsible;
  - (2) that is adverse to the worker; and
  - (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

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<sup>42</sup> To what extent the rate would be affected and whether that will actually result in higher future taxes is currently unknown as that depends on a number of future factors.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.<sup>43</sup>

As stated earlier, why an individual quit the employment is a question of fact.<sup>44</sup> The ULJ found as a fact that Haugen quit on June 29 because of a reduction in hours with its corresponding pay reduction. There is substantial evidence to support the ULJ's finding of fact, that is, the testimony of Haugen. He testified that "the main reason" he quit was the reduction in hours.<sup>45</sup> Haugen testified that he didn't quit earlier – the reduction occurring mid-April – because he didn't have anything else lined up and he thought he'd give it a try and see how it worked out.<sup>46</sup> But in April when the reduction occurred, Haugen had told William Mellgren, the vice president, that "he didn't think he could make it on 24 hours."<sup>47</sup>

Haugen's giving it a try for a couple of months can't said to be acquiescence or acceptance, especially when Haugen complained about the change. Giving it a try was certainly not an unreasonable response. The question

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<sup>43</sup> Minn. Stat. § 268.095, subd. 3.

<sup>44</sup> *Midland Electric Inc. v. Johnson*, 372 N.W. 2d 810, 812 (Minn. App. 1985); *Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380, 382 (Minn. App. 1986).

<sup>45</sup> T. 23.

<sup>46</sup> T. 37.

<sup>47</sup> Mellgren's testimony, T. 31.

becomes whether the decrease in hours amounts to a good reason caused by the employer for quitting.

Relator asserts that the original agreement at the time of hire was that Haugen work 28 hours a week and that being told in mid-April 2011 that he was to work 24 hours a week was not much of a change. Haugen was hired in August 2008. It was Troy Olson, Superior' president, who testified, "He started out (at 28 hours) and then the hours increased almost right away."<sup>48</sup> The hours changed because Superior asked Haugen to double the amount of work he was expected to do, as they asked him to take over management of an 18 unit apartment building, in addition to the 16 houses he was to handle under the original agreement.<sup>49</sup> The parties amended the original oral employment agreement. The evidence is that for over two years Haugen worked 40 hours, half his hours on the apartment building. When Superior reduced his hours, the evidence is that he was expected to still handle the 18 unit apartment, as well as the 16 houses. It was Superior that, in mid-April, altered the amended employment agreement that was in place.

Relator asserts that Minnesota law recognizes only decreases in hourly pay as being good reason to quit and because the \$15 per hour rate remained the same, a decrease in the weekly hours is not a good reason to quit. But Relator has

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<sup>48</sup> T. 10.

<sup>49</sup> Haugen testified (T. 35) he spent half his time on the apartment building.

overlooked *Danielson Mobil, Inc. v. Johnson*,<sup>50</sup> where a 48 hour work week was reduced to 40 hours. The Court of Appeals analyzed the case as “a wage reduction of about 19%.”<sup>51</sup> Citing the 1981 Supreme Court decision of *Sunstar Foods v. Uhendorf*<sup>52</sup> dealing with wage reductions, the Court of Appeals held good cause to quit.

Factoring in the commission on a weekly basis, Superior was reducing Haugen’s weekly wages by over 30 percent. The only evidence in the record regarding commissions is that Haugen was to get two percent of the monthly rent, and that the total rent for June was \$29,786. That works out, at 4.3 weeks per month, to \$138 per week.<sup>53</sup> When \$138 is added to Haugen’s weekly pay from September 2008 to late 2010 (when his hours were reduced to 32) of \$600 (40 hours x \$15) the total is \$738. Haugen was faced with a weekly pay reduction to \$360 (24 hours x \$15). And when the commissions are added, he faced an overall weekly pay reduction of from \$738 to \$498. That decrease is approximately 30 percent. Under Minnesota law, such a wage reduction gives the worker a good reason caused by the employer for quitting.

Relator does not understand the Minnesota Unemployment Insurance Law when it is asserted that working less than 32 hours a week entitles an applicant to

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<sup>50</sup> 394 N.W.2d 251 (Minn. App. 1986). See also the Iowa Supreme Court decision of *Dehmel v. Employment Appeals Board*, 433 N.W.2d 700 (Ia. 1988) which, citing *Danielson*, held good cause to quit when the working hours were reduced from 45 hours per week to between 27 and 32 hours a week.

<sup>51</sup> *Id.* at 253.

<sup>52</sup> 310 N.W.2d 80, 84 (Minn. 1981).

<sup>53</sup> \$29,786 x 2% = \$595. \$595 ÷ 4.3 = \$138.

partial benefits.<sup>54</sup> Relator overlooks the testimony of Rob Hart, Superior's representative at the hearing. As Hart explained, if Haugen has earnings in a week equal to or above \$365 (Haugen's weekly unemployment benefit amount) "..., then he's not entitled to benefits."<sup>55</sup> Working less than 32 hours per week is simply one of many requirements imposed on an applicant in order to be eligible for the payment of unemployment benefits for any given week.<sup>56</sup>

Haugen was paid just over \$1,000 in unemployment benefits over the nine-week period April 24 to June 25, 2011.<sup>57</sup> Some of the weeks the wages assigned were more than Haugen's weekly unemployment benefit amount, and he would not be eligible for partial benefits during those weeks.<sup>58</sup> Apparently, Relator contends that the \$1,000 in unemployment benefits paid should be factored in the wage reduction Haugen experienced, and whether he in turn had a good reason caused by Superior for quitting. That the unemployment benefits are paid from state funds, not employer funds, is not subject to argument.<sup>59</sup> In other words,

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<sup>54</sup> Relator's brief, p. 10. Relator quotes the statutory definition of "unemployed" – Relator's brief, p. 14 – but overlooks the conjunctive "and" between clauses (1) and (2). Under the statutory definition, at clause (2), an applicant who has earnings in a week equal to or more than his weekly unemployment benefit amount is not considered "unemployed."

<sup>55</sup> T. 42. *See* Minn. Stat. § 268.085, subd. 5.

<sup>56</sup> *See* Minn. Stat. § 268.085.

<sup>57</sup> T. 42.

<sup>58</sup> E-5. Whether the wages were properly assigned was not the subject (or an issue) of the hearing and it is not an issue in this appeal – it appears to have been involved in prior evidentiary hearings conducted by ULJ Bryan Eng as discussed on page 1, footnote 1 of this brief.

<sup>59</sup> *See* Minn. Stat. § 268.069, subd. 2 (codification of a number of Supreme Court decisions of longstanding).

Relator asserts that if an employer decreases a worker's wages, such that the worker qualifies for a government benefit, the worker suffers no reduction.

Putting aside the question as to how this argument could be applied to compelling a worker over age 62 to apply for (partial) social security benefits, how an applicant's weekly unemployment benefits are determined shows the illogic of the argument. Under the statute, an applicant's weekly unemployment benefit amount is 50 percent of his average weekly wages paid during the four quarter base period.<sup>60</sup> In order to collect partial unemployment benefits (while working less than 32 hours), the earnings the applicant has during any week must be less than his weekly unemployment benefits.<sup>61</sup> For most applicants working half time – having previously working full time – will render them ineligible because they are earning 50 percent of their average weekly wages (equaling their weekly unemployment benefit amount). For Haugen, working 25 hours a week – an hour more than he was cut to – renders him ineligible because he will earn \$375 (25 x \$15 = \$375) which is more than his weekly benefit amount of \$365. Haugen, in fact, did that during the week ending May 14, 2011 (During the week ending May 21 he worked 28 hours.).<sup>62</sup>

The Minnesota courts have held that a 19 percent or more wage reduction is good cause to quit. But Relator's argument has the result of saying that a reduction that results in the worker incurring more than a 50 percent reduction in

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<sup>60</sup> See Minn. Stat. § 268.07, subd. 2.

<sup>61</sup> Minn. Stat. § 268.085, subd. 5.

<sup>62</sup> E-5.

average weekly wages would not be good cause to quit because the worker could collect partial unemployment benefits. What we are left with is that a cut of 19 percent up to 50 percent is good cause to quit, but a cut of more than 50 percent is not. That's ridiculous.

Relator also asserts that Haugen never complained about the wage reduction, and therefore that "adverse working condition" can't be considered a good reason for quitting under paragraph (c) of the statutory definition. But setting aside whether a wage reduction can be considered an "adverse working condition" for purposes of the statutory definition, Haugen did complain. Relator overlooks the testimony of William Mellgren, Superior's vice president, who testified that at a meeting, Haugen "said he didn't think he could make it on 24 hours."<sup>63</sup> Telling that to Superior's vice president meets the statutory requirement.

Haugen incurred an overall weekly wage reduction of some 30 percent. Under Minnesota law, Haugen had a good reason caused by Superior for quitting the employment.

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<sup>63</sup> T. 31.

**2. The Court of Appeals has already ruled on corporations being represented before it by non-attorneys.**

Relator contends that non-attorneys must be allowed to represent corporations before the Court of Appeals.<sup>64</sup> But Relator overlooks the 1988 Court of Appeals decision in *Contemporary Systems Design v. Commissioner*.<sup>65</sup> The Court ruled (in an unemployment insurance case) that a non-attorney may not represent a corporation before the Court. The Court quoted a California case, *Paradise v. Nowlin*, in which a California court explained:

A natural person may represent himself and present his own case to the court although he is not a licensed attorney. A corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person.<sup>66</sup>

The Court discharged the writ of certiorari. In *Rosebud Federal Credit Union v. Mathis Implement, Inc.*, the South Dakota Supreme Court cited *Contemporary Systems* and noted that “The overwhelming majority of jurisdictions have determined that in legal proceedings a corporation may be represented only by a licensed attorney.”<sup>67</sup> Federal law requires the same, as “[c]orporations and partnerships, both of which are fictional legal persons, obviously cannot appear for themselves personally.”<sup>68</sup> This is a longstanding

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<sup>64</sup> Relator’s brief, pp. 45-47.

<sup>65</sup> 431 N.W.2d 133 (Minn. App. 1988).

<sup>66</sup> 195 P.2d 867 (Cal. App. 1948).

<sup>67</sup> 515 N.W.2d 241, 244 (S.D. 1994).

<sup>68</sup> *Turner v. American Bar Ass’n*, 407 F.Supp. 451, 476 (D.C.Ala. 1975) (“With regard to these two types of business associations, the long standing and consistent court interpretation of § 1654 is that they must be represented by licensed counsel.”).

requirement. In 1824 Chief Justice John Marshall wrote in *Osborn v. Bank of the United States* that “A corporation, it is true, can appear only by attorney, while a natural person may appear by himself.”<sup>69</sup> In 1993 the United States Supreme Court noted that “It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel.”<sup>70</sup>

In 2005 the Minnesota Supreme Court confirmed in *Save Our Creeks v. City of Brooklyn Park* that “It is well settled under Minnesota common law that a corporation must be represented by an attorney in legal proceedings.”<sup>71</sup> The Minnesota Supreme Court there cited *Nicollet Restoration, Inc. v. Turnham* for the rationale behind this requirement, explaining:

A non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. The agent knows but one master, the corporation, and owes no duty to the courts. In addition, a corporation is an artificial entity which can only act through agents. To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license.<sup>72</sup>

The Minnesota Court of Appeals reiterated this analysis less than two years ago, in *301 Clifton Place L.L.C. v. 301 Clifton Place Condominium Ass'n*, when it

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<sup>69</sup> 22 US (9 Wheat.) 738, 830, 6 L.Ed. 204 (1824).

<sup>70</sup> *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993).

<sup>71</sup> 699 N.W.2d 307, 309 (Minn. 2005).

<sup>72</sup> *Save Our Creeks*, 699 N.W.2d at 309, citing 486 N.W.2d 753, 754 (Minn. 1992).

cited *Save Our Creeks* and *Nicollet Restoration* to underline the “ethical and professional considerations” motivating the rule.<sup>73</sup>

**3. The legislature has not authorized corporations to appear before the Minnesota Court of Appeals without counsel.**

Relator contends that the legislature has passed laws allowing corporations to appear before this Court without counsel.<sup>74</sup> It argues first that the Court of Appeals is “a creature of statute and not a constitutional court,” and “must abide by all statutory pronouncements.”<sup>75</sup> The brief then argues that Minn. Stat. § 481.02 allows “corporations to appear *pro se* when then [sic] were a named party in the action.”<sup>76</sup> These arguments are both wrong, and this brief will first address this Court’s status as a part of the judicial branch before addressing relator’s erroneous interpretation of § 481.02.

First, this Court is unquestionably part of the Minnesota judiciary. Relator acknowledges that the Minnesota Supreme Court in *Nicollet Restoration, Inc. v. Turnham*, held that determining who may appear before the courts of this state is a power vested, under the Constitution, solely in the judiciary.<sup>77</sup> Relator’s brief therefore concludes that this counsel requirement does not apply to the Court of Appeals, as this Court was created by the legislature and is therefore not a part of

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<sup>73</sup> 783 N.W.2d 551 (Minn. App. 2010).

<sup>74</sup> Relator’s brief, pp. 15-24.

<sup>75</sup> Relator’s brief, p. 18.

<sup>76</sup> Relator’s brief, p. 22.

<sup>77</sup> 486 N.W.2d 753, 755 (Minn. 1992); relator’s brief, p. 17.

the judiciary.<sup>78</sup> This is a tortured and erroneous interpretation of the Minnesota constitution.

Article VI, Section 1 of the Minnesota constitution states that “[t]he judicial power of the state is vested in a supreme court, a court of appeals, if established by the legislature, a district court and such other courts, judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish.” The language is clear: the Court of Appeals, once established by the legislature, has vested judicial power. The court of appeals, under Minn. Const. art. VI, § 2, has appellate jurisdiction “over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law.” There are only three branches of government, and the Court of Appeals is neither part of the Legislative department nor the Executive department.<sup>79</sup>

It is perhaps a testament to the rather obvious judicial nature of this Court that few decisions have directly addressed its standing in the judicial branch. There have been references, though, to this Court’s inherent judicial authority. The Minnesota Supreme Court, for example, recognized in *Airports Com'n v. Airports Police Fed.* that “the legislature in providing judicial appeals cannot deny this court its constitutionally independent appellate authority to review whatever

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<sup>78</sup> Relator’s brief, p. 17.

<sup>79</sup> Art. III, section 1 of the Constitution provides that “government shall be divided into three distinct departments: legislative, executive, and judicial.”

case it deems necessary in the interests of justice.”<sup>80</sup> It recognized that same authority in the Court of Appeals, noting that “this court and the court of appeals have the authority to accept jurisdiction if either court deems the interests of justice so warrant.”<sup>81</sup> This language contains no exception; the Court of Appeals derives this power from its judicial authority, and not from the legislature.

Moreover, only the judicial branch may consider constitutional questions, and the very fact that relator raises constitutional arguments in its brief implicitly acknowledges this Court’s judicial authority. This Court has explained that “[d]eciding constitutional issues is within the exclusive province of the judicial branch, and therefore a constitutional question that could not have been properly raised before an administrative hearing officer may be addressed for the first time on appeal if it has been properly briefed and argued on a complete record.”<sup>82</sup> When this Court decides the constitutional questions in this case, it will be doing something that only the judicial branch can do.

Second, even if this were not true, the law still does not allow corporations to represent themselves. The law on its face makes no such allowance. Minn. Stat. § 481.02, subd. 1, states that “it shall be unlawful for any person or

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<sup>80</sup> 443 N.W.2d 519, 523 (Minn. 1989). *See also State v. Verschelde* 595 N.W.2d 192, 196 (Minn. 1999) (“while the court of appeals is not required to hear appeals from stays of adjudication, it is not in any way prohibited from hearing such appeals.”).

<sup>81</sup> *Id.*

<sup>82</sup> *Rainbow Taxi Corp. v. City of Minneapolis*, 2009 WL 1444100, at \*1 (Minn. App.) (Minn. App. May 26, 2009), Appendix, A10-A14, *citing Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998).

association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court...except personally as a party thereto..." Minnesota courts have interpreted this to mean that corporations must be represented by counsel, as they are incapable of appearing personally. Multiple cases on this issue cite to an unemployment insurance case, *Contemporary Systems*. In *Potpourri Health Foods Trust v. Scherping*, this Court concluded that "we note non-attorneys are prohibited from representing corporations in court proceedings. Corporations, having no individual identity, cannot appear pro se and present their case without counsel."<sup>83</sup> Natural people are capable of writing and speaking on their own behalf; corporations, which are legal fictions that exist solely on paper, do not. Some natural person must advocate on behalf of a corporation, and that natural person must be an attorney.

Relator's brief is misleading in its characterization of judicial interpretation of this statute. This Court has not conceded, blushing or otherwise, that the statute could be interpreted to allow corporations to be represented by a non-attorney. Relator's brief asserts that this is what this Court did in a footnote in *Walnut Towers v. Schwan*, claiming that it was referring to Minn. Stat. § 481.02, subd. 2, when it stated that "we recognize that there could be alternative readings

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<sup>83</sup> 1992 WL 71996, at \*4 (Minn. App. Apr 14, 1992) (internal citations omitted), citing *Contemporary Sys. Design v. Commissioner of Jobs and Training*, 431 N.W.2d 133 (Minn. App. 1988), Appendix, A19-A21.

of this statute.”<sup>84</sup> Actually, the footnote clearly refers to Minn. Stat. § 481.02, subd. 3(12), in discussing when management agents (including natural persons) can appear on behalf of the owner of a rental property. It is entirely unrelated to the unambiguous language of the first and second subdivisions of Minn. Stat. § 481.02.

Moreover, even if the legislature were to pass legislation allowing corporations to be represented by non-attorneys, the Minnesota constitution would not allow it. The Court of Appeals has repeatedly reaffirmed *Nicollet Restoration*, in explaining that “‘legislative enactments which purport to authorize certain classes to practice law in the courts of this state are not controlling upon the judiciary.’....When appearing before this court, our supreme court, or in district court, the law in Minnesota requires that a corporation must be represented by a licensed attorney.”<sup>85</sup>

#### **4. The representation requirement does not violate the equal protection clause of the federal or state constitution.**

Relator does not attempt to reconcile this voluminous body of case law with its argument that the Court of Appeals violates equal protection by requiring corporations to appear by counsel.<sup>86</sup> It argues that Minn. Stat. § 268.105, subd. 7,

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<sup>84</sup> Relator’s brief, p. 22, citing *Walnut Towers v. Schwan*, 2008 WL 4224462, n.1 (Minn. App. Sep. 16, 2008), Appendix, 15-A18.

<sup>85</sup> *Towers v. Schwan*, 2008 WL 4224462, at \*2 (Minn. App. Sep. 16, 2008), citing *Nicollet Restoration*, 486 N.W.2d at 756. See also *World Championship Fighting, Inc. v. Janos*, 609 N.W.2d 263 (Minn. App. 2000).

<sup>86</sup> Relator’s brief, pp. 45-47.

makes an “unreasoned distinction” by preventing corporations from appealing to the Court of Appeals without counsel. It then cites *Williams v. Oklahoma City*, the United States Supreme Court case holding that a state could not bar an indigent convict’s appeal simply because he could not afford the cost of the trial transcript.<sup>87</sup> The Department little knows what to make of this argument; it is not clear what portion of subd. 7 relator argues is unconstitutional, nor is it clear why the relator thinks it is so. Subd. 7 requires appealing employers to pay the cost bond and court fees required by the Rules of Civil Appellate procedure, and relator makes no argument that these rules are unconstitutional. Subd. 7 also requires appealing employers to pay for the cost of the transcript, an issue that is addressed separately in both the relator’s and Department’s brief. Subd. 7 imposes no representation requirement, and in the absence of specific argument from the relator, the Department would refer the Court to its arguments concerning the constitutionality of charging employers fees.

**5. The fee requirement on employers in Minn. Stat. § 268.105, subd. 7 does not violate equal protection.**

Relator’s brief concedes that statutes are presumed to be constitutional, and that it bears the burden of establishing beyond a reasonable doubt that a challenged statute violates a constitutional right.<sup>88</sup>

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<sup>87</sup> 395 U.S. 458, 459-60 (1969).

<sup>88</sup> Relator’s brief, pp. 29-30, citing *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005).

The Department agrees with the tests laid out by relator in its brief. The Minnesota Supreme Court in *Gluba ex rel. Gluba* explained:

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 is 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.<sup>89</sup>

Relator argues that Minn. Stat. § 268.105, subd. 7 is unconstitutional because appealing employers must pay fees, transcript costs, a cost bond, and attorneys’ fees, and that there are no qualitative differences between appealing applicants and appealing attorneys.<sup>90</sup>

First, it appears that corporations can petition to proceed in forma pauperis. Minn. Stat. § 563.01 only requires that Minnesota courts allow natural people to proceed in forma pauperis. But the language of Rule 109 of the Minnesota Rules of Civil Appellate Procedure is broader, and allows any party to move for leave to

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<sup>89</sup> *Gluba ex rel. Gluba*, 735 N.W.2d at 721 (internal citations omitted).

<sup>90</sup> Relator’s brief, pp. 33-34.

proceed in forma pauperis. The in forma pauperis costs are then borne by the state, under Minn. Stat. § 480.182. There is nothing in the language of the court rules that would indicate that a nearly-bankrupt corporation could not avail itself of this process.

Second, and far more importantly, there is a rational basis for treating applicants and employers differently. The two are involved in the unemployment insurance system in entirely different ways, for entirely different purposes. Applicants seek benefits because they have lost their jobs. The unemployment insurance program's purpose is laid out by statute. Minn. Stat. § 268.03, subd. 1, explains that the economic insecurity caused by unemployment is a public concern, and that "[t]he public good is promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed." Applicants have a direct interest in the payment of benefits; employers do not pay such benefits directly, and instead are impacted only by the higher tax rate they might face when a former employee collects.

The program is designed to directly benefit workers, and to indirectly benefit the public, by paying a partial wage replacement and alleviating economic insecurity. The program was not designed to directly benefit employers, who pay taxes because it is part of the cost of doing business in Minnesota. In short, applicants seeking a benefit are treated differently from employers seeking to avoid a tax. Minn. Stat. § 268.031, subd. 2, instructs decisionmakers to narrowly

construe the statute in favor of finding eligibility for benefits. It contains no such admonition to construe the statute in favor of limiting employers' taxes.

There are undoubtedly cases in which applicants have independent sources of financial support, and have no real need for the benefits they receive. There are also undoubtedly cases in which the employer can ill afford to pay a higher tax rate, and will suffer for it. But the statutes were written in recognition of the general rule: unemployed workers in need of a temporary wage replacement cannot generally afford to pay fees or costs. Employers – who have not just lost their livelihood and major source of financial support – can generally afford to make such payments.

This has nothing to do with deterring frivolous appeals; if that were the goal then both parties would likely face hefty costs and fees. Instead, the statute was written to acknowledge that most unemployed people – who have lost their jobs and have not been found eligible for unemployment benefits – are in financial need. The Minnesota Supreme Court in *ILHC of Eagan* wrote that “We have also noted that the complainant has the burden to show that ‘the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.’”<sup>91</sup> Here, the classification – automatically exempting appealing applicants from costs and fees – is rationale, and based on the general truth that to require costs and fees would likely prevent most unemployed applicants from pursuing an appeal. The legislature was surely

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<sup>91</sup> *ILHC of Eagan*, 693 N.W.2d at 421.

rational in devising a system that would allow the unemployed an affordable route to vindicate their rights, while not concurrently giving employers a cost-free opportunity to fight a tax hike.<sup>92</sup> Relator may think that this system is unfair, but it does not make it irrational.

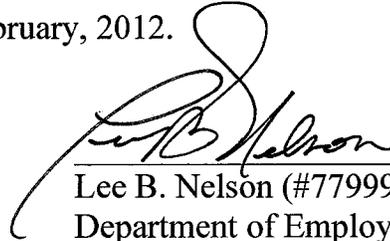
### **Conclusion**

Unemployment Law Judge Richard Reeves correctly concluded that Daniel Haugen quit for a good reason caused by his employer, Superior Development, Inc. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

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<sup>92</sup> The filing fee exemption for applicants for unemployment benefits has existed in law since 1937. *See* 1937 Minnesota Unemployment Compensation Law, Section 8(j).

Dated this 21<sup>st</sup> day of February, 2012.



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