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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0005**

William H. Moore,  
Relator,

vs.

Waterstone Capital Management L.P.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 26, 2013  
Affirmed as modified  
Chutich, Judge**

Department of Employment and Economic Development,  
File No. 30023754-3

Jasper D. Berg, IAJ Law, LLC, Woodbury, Minnesota (for relator)

Waterstone Capital Management, L.P., Plymouth, (respondent employer)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Kirk,  
Judge.

## UNPUBLISHED OPINION

**CHUTICH**, Judge

On certiorari appeal from an ineligibility determination, relator William Moore contends that the unemployment-law judge erred by concluding that a deferred-bonus payment and a settlement agreement delayed his eligibility for unemployment benefits under Minnesota Statutes section 268.085, subdivision 3 (2012). We conclude that the unemployment-law judge correctly determined that Moore's benefits are delayed based on the deferred bonus, but erred by determining that benefits are delayed based on the settlement agreement. Because the judge's error has no bearing on the final determination that Moore was ineligible for benefits during his benefit year, however, we affirm as modified.

### FACTS

Moore worked for Waterstone Capital Management (Waterstone) from March 9, 2009, until Waterstone terminated his employment without cause on February 1, 2012. Moore's yearly salary at the time of his termination was \$175,000 plus a performance bonus, the amount of which was in the sole discretion of Waterstone's Chief Executive Officer.

Waterstone utilizes a deferred payment structure for its employee bonuses. An employee is eligible for a performance bonus for each calendar year "to be payable on a date within the first 60 days of the following calendar year." But "[o]ne third of each year's bonus up to \$150,000 and fifty percent thereafter will be deferred over a three year period." Waterstone then pays the employee one-third of the deferred amount on the

anniversary date of the respective bonus payment for the next three years. If an employee is terminated without cause, “all deferred and unpaid compensation will become fully vested, and be due and payable within five (5) business days” after the net value of the deferred compensation is calculated.

Moore established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (department) and received a weekly benefit of \$597 beginning the week of February 5, 2012.

About two weeks after terminating his employment, Waterstone paid Moore \$559,610.30 as a deferred payment from the 2009 and 2010 bonuses. Approximately two months later, Moore and Waterstone entered into a settlement agreement and Waterstone paid Moore an additional \$100,000 to settle “all payments under [Moore’s] Employment Agreement” and to release Waterstone “from any and all claims, damages and expenses whatsoever arising under, or in connection with, [Moore’s] Employment Agreement.”

In July 2012, Waterstone informed the department that it had made two payments totaling \$659,610.30 to Moore. The department determined that the \$100,000 settlement payment was severance and delayed Moore’s eligibility for unemployment benefits until September 8, 2012. The department did not make a determination as to whether the deferred-bonus payment affected Moore’s eligibility.

Moore appealed the determination, attaching a letter from Waterstone in which Waterstone clarified that the \$100,000 settlement payment was consideration for Moore’s “general waiver of liability” and was not “notice pay, severance pay, retention bonus, vacation pay or a lump-sum pension payout.”

After a telephone hearing, the unemployment-law judge concluded that both the bonus payment and the settlement payment delayed Moore's unemployment benefits, making Moore ineligible until December 13, 2015. This conclusion resulted in an overpayment of unemployment benefits in the amount of \$19,701. Moore requested reconsideration, and the judge affirmed his initial determination. This certiorari appeal followed.

## DECISION

We may remand, reverse, or modify a decision of the unemployment-law judge if the substantial rights of the relator were prejudiced because the findings, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2012). “This court views the [unemployment-law judge’s] factual findings in the light most favorable to the decision,” defers to the unemployment-law judge’s credibility determinations, and “will not disturb the [unemployment-law judge’s] factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

Statutory construction is a legal issue that we review de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007). When interpreting a statute, our object is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2012). “[We] first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d

273, 277 (Minn. 2000) (quotation and citation omitted). If the legislature’s intent is clearly discernible from a statute’s unambiguous language, we interpret the language according to its plain meaning without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004).

Minnesota unemployment-insurance law provides workers who are unemployed through no fault of their own with temporary partial wage replacement. Minn. Stat. § 268.03 (2012). The law is remedial and must be applied in favor of awarding benefits. Minn. Stat. § 268.031, subd. 2 (2012). A “provision that would preclude an applicant from receiving benefits must be narrowly construed.” *Id.*

Under Minnesota law, certain employment-related payments may delay an applicant’s receipt of unemployment benefits. Minn. Stat. § 268.085, subd. 3. An applicant is not eligible to receive unemployment benefits for any week that 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:

....

(2) severance pay, bonus pay, and any other payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but only if the payment is considered wages at the time of payment under section 268.035, subdivision 29[.]

*Id.*, subd. 3(a).

### *Deferred Bonuses*

Moore first contends that the unemployment-law judge clearly erred in finding that the \$559,610.30 payment was a bonus rather than back pay. Moore admits that the payment was part of his 2009 and 2010 bonuses, but argues that it does not fall under the subdivision's use of the term "bonus" because the payments were deferred. The plain language of the statute and Moore's employment contract do not support Moore's argument.

Subdivision 3(a)(2) states that an applicant is ineligible to receive employment benefits for any week that the applicant receives "bonus pay," and makes no distinction for deferred bonus payments. *See* Minn. Stat. § 268.085, subd. 3(a)(2). The payment was not part of Moore's regular yearly salary for 2009 or 2010 and therefore cannot be considered back pay for lost wages during his employment. *See* Minn. Stat. § 268.035, subd. 3 (2012) (defining back pay as "retroactive payment of money by an employer to an employee or former employee for lost wages"). Moreover, under Moore's employment contract, his interest in the bonus payment did not fully vest until five days after his termination. Thus, the unemployment-law judge did not err in concluding that the deferred-bonus payment delayed Moore's eligibility for unemployment benefits under subdivision 3(a)(2).

### *Settlement Agreement*

Moore also argues that the unemployment-law judge clearly erred in finding that the \$100,000 settlement payment delayed his unemployment benefits. We agree.

Under section 268.085, subdivision 3(a)(2), an applicant is not eligible for unemployment benefits if he receives “severance pay, bonus pay, and any other payments . . . paid by an employer because of, upon, or after separation from employment, but only if the payment is considered wages at the time of payment.” It appears that the unemployment-law judge concluded that the \$100,000 was considered an “other payment” under subdivision 3(a)(2), and the parties do not dispute that the settlement was reached after, and as a result of, Moore’s termination.

The remaining consideration therefore is whether the payment was “considered wages at the time of payment under section 268.035, subdivision 29.” *Id.* The unemployment-law judge did not specifically address this clause of the statute. Because the settlement payment does not fit the statutory definition of “wages,” we conclude that the judge erred by deciding that Moore’s benefits are delayed based on this payment.

Minnesota Statutes section 268.035, subdivision 29, defines wages as

all compensation for services, including commissions; bonuses, awards, and prizes; severance payments; standby pay; vacation and holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of housing, utilities, meals, exchanges of services, and any other goods and services provided to compensate for an employee’s services[.]

(2012). The payment was not a bonus payment because the settlement agreement clearly stated that Waterstone had already paid Moore all of the deferred compensation that he was entitled to receive. It was also not a severance payment because it was in no way

correlated to Moore's length of employment. See *Carlson v. Augsburg Coll.*, 604 N.W.2d 392, 394–95 (Minn. App. 2000) (defining severance pay as “[a] sum of money usually based on length of employment for which an employee is eligible upon termination” (alteration in original) (quotation omitted)). The settlement agreement stated that the payment was an “*additional* \$100,000 in consideration for signing” the settlement agreement. Accordingly, the settlement payment was not back pay. It was also not compensation for Moore's services because it is admittedly for his future actions. Because the settlement payment does not fall within the broad definition of wages, the unemployment-law judge erred by concluding that the payment delayed Moore's eligibility for unemployment benefits under Minnesota Statutes section 268.085, subdivision 3(a)(2).

Nevertheless, the unemployment-law judge's error does not affect the ultimate conclusion that Moore was ineligible for benefits for his entire benefit year, from February 2012 through February 2013. Based on his employment at Waterstone, Moore was potentially eligible for benefits for one year following his termination. See Minn. Stat. § 268.085, subd. 1(2) (2012); Minn. Stat. § 268.035, subd. 6 (2012) (defining an applicant's benefit year as “the period of 52 calendar weeks beginning the date a benefit account is effective”). But he was ineligible to receive benefits during weeks that his bonus payments exceeded his weekly benefit amount. Minn. Stat. § 268.085, subd. 3.

Minnesota Statutes section 268.085, subdivision 3(b), sets forth the procedure for determining the number of weeks a payment under subdivision 3(a) can disqualify an applicant from receiving benefits. Because Waterstone paid Moore in a lump sum, “that

sum is divided by the applicant's last level of regular weekly pay from the employer.” *Id.*, subd. 3(b)(2). Moore testified that at the time of his termination, his weekly pay was \$3,365.39. Accordingly, his deferred bonus payment alone delayed his benefit eligibility for 166 weeks, well beyond his entire benefit year.

Finally, because Moore was receiving payment “equal to or in excess of [his] weekly unemployment benefit amount, in the form of . . . bonus pay,” for the entire benefit year, he was not eligible for unemployment benefits. *Id.*, subd. 3. Nevertheless, Moore received a weekly unemployment benefit of \$597 for 33 weeks after his termination. Accordingly, the unemployment-law judge correctly determined that Moore received \$19,701 in overpayment of benefits that he is required to repay. *See* Minn. Stat. § 268.18, subd. 1(a) (2012) (stating that any applicant who receives an overpayment of unemployment benefits “must promptly repay the unemployment benefits to the trust fund”).

**Affirmed as modified.**