

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

**Court File No. A05-1907**  
**Appeal No. 9465 05**

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Martin A. Morales  
Appellant

VS

**APPELLANT'S ARGUMENT**  
**PURSUANT TO RULE 128.01, SUBD.2**

Department of Employment and Economic Development

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**ISSUE**

**Did Richard C. Sebo, Unemployment Law Judge, misinterpret specific actions taken by Mr. Morales in his attempt to file for unemployment. In addition, is Mr. Morales wrongly being denied unemployment compensation due to him receiving inaccurate information from the Department of Employment and Economic Development?**

**ARGUMENT**

Mr. Morales was released from employment by the American Red Cross on March 1, 2005. The reason for his release from employment was due to a restructure. Mr. Morales called the unemployment office to begin the process for collecting unemployment on March 2, 2005. Mr. Morales provided the unemployment counselor his termination date and explained that a decision as to added income such as severance had not yet been decided. However, he knew that he was to receive pay for unused vacation. The employment counselor informed Mr. Morales that he would not receive any unemployment compensation until any added income

determination had been made as to when he would be receiving unemployment pay. *The employment counselor told Mr Morales to wait until the decision was made on additional compensation and apply at that time*

On Friday, May 20, 2005, Mr. Morales was informed that he would only be receiving unused vacation pay with no additional severance. Mr. Morales called to apply for unemployment as instructed on Monday, May 23, 2005. It was during this conversation that Mr. Morales was informed by an employment counselor that he would only be eligible for unemployment starting May 15, 2005. They would not be able to go retroactive to March 2, 2005. The employment counselor informed Mr. Morales that there was nothing he could do about the previous misinformation he had received.

Mr. Morales called the teleclaim number to request payment as directed. Mr. Morales talked to another employment counselor and told her about his claim and asked her if there was anything he could do to appeal his case. She instructed him to submit his claim in writing along with the appropriate paperwork that was requested to the Saint Cloud office. Mr. Morales submitted his appeal (Attachment 1) on June 1, 2004 to the Saint Cloud office as directed.

Around June 15, 2005, Mr. Morales called the Saint Paul office to check on the status of his appeal. Mr. Morales was informed that someone would return his call. Mr. Morales received a call on June 17, 2005, from a person (Amber) in the Saint Cloud office informing him that she could not locate any of the documentation he had sent their office.

She informed Mr. Morales to resubmit his documentation to Ms. Anne O'Brian, Appeals Office, in Saint Paul, MN. Mr. Morales sent a letter to Amber thanking her for her efforts in trying to locate his file (Attachment 2). In addition, he copied Ms. Ann O'Brian, Appeals Office, Saint Paul and sent her and Amber a copy of his original appeal of June 1, 2005.

Mr. Morales was informed (Attachment 3) on June 20, 2005, that his appeal for backdating his unemployment was denied. Mr. Morales again submitted his appeal (Attachment 4) for reconsideration. On July 15, 2005, Mr. Morales was involved in a phone hearing (Attachment 5) where his testimony was taken.

Mr. Morales' appeal was denied (Attachment 6) on July 19, 2005, by Richard Sebo, Unemployment Law Judge. Mr. Morales was informed in that correspondence that he again could appeal the judges finding. Mr. Morales submitted another appeal (Attachment 7) on August 11, 2005. Mr. Morales sent his appeal to Ms. Darlene Trainor, Supervising Legal Secretary, Office of the Unemployment Law Judge, in Saint Paul, MN.

Mr. Morales submitted his appeal (number 9465 05) for reconsideration. Mr. Morales agreed with the over-all "finding of facts" stated on the document dated July 19, 2005, by Richard C. Sebo, Unemployment Law Judge. However, he felt a specific statement to be open for interpretation. The finding states: "*Even though Morales testified that he was told that he should file later, the fact remains that Morales did not attempt to file an application at that time.*" Mr. Morales contends that the sole purpose of the original call

was to apply for unemployment. In addition, Mr. Morales is still contesting the fact of receiving inaccurate information.

On August 30, 2005, Mr. Morales again received a notice (Attachment 8) that his appeal had been denied. Mr. Morales' only alternative at that time was to appeal the petition to the Minnesota Court of Appeals. That is the current status of Mr. Morales' appeal process.

### CONCLUSION

**Mr. Morales firmly believes that the facts and interpretations of his actions clearly show that he is a victim of unusual circumstances. Unemployment Law Judge, Richard C. Sebo's interpretation that Mr. Morales did not attempt to file does not lend itself to fact. First, the sole purpose of Mr. Morales in calling the unemployment office was to apply for unemployment at that time. It was the counselor's job to inform Mr. Morales that he should start a file at that time. Mr. Morales could not tell the counselor how to do his/her job -- they should know. Starting a file is the first step in unemployment and clearly should be known by all counselors. How many citizens who have never filed for unemployment know the process? All Mr. Morales knew was to call and file for unemployment which he did. This was his first contact with the unemployment department. Mr. Morales made the mistake of assuming the counselor knew what he/she was saying. Second, why would Mr. Morales call the unemployment office right after he learned of his payout**

**from the Red Cross? Mr. Morales didn't just call out of the blue; he called because that is what he was told to do.**

**It seems that Mr. Morales is the only one who is paying (\$) the price for, in his opinion, for an unqualified counselor who responded inaccurately to his request for filing unemployment on March 2, 2005. As Mr. Morales has stated in his previous documentation, the American Red Cross is not contesting his unemployment and are committed to restitution. Mr. Morales is asking that his request for eligibility for benefits starting March 2, 2005 be allowed. Should there be any questions as to this brief, please feel free to call Mr. Morales at 952-888-3852 Ext. 207.**

Date: November 17, 2005

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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) (with amendments effective July 1, 2007).