

No. A06-715

State of Minnesota
In Court of Appeals

DANIEL J SCHEELER,

Relator,

vs.

SARTELL WATER CONTROLS INC,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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I. LEGAL ISSUE

Under the law, an applicant on a voluntary leave of absence is ineligible for unemployment benefits. The statute defines a leave of absence as voluntary when work is available, but the applicant chooses not to work. Daniel J. Scheeler could have worked, but instead volunteered to accept a temporary leave program offered by his employer, with the understanding that he would return to work no later than 90 days later. While on leave, he moved out of state, so that when he was recalled, he refused to return to work. Was Scheeler on a voluntary leave of absence?

II. STATEMENT OF THE CASE

This case involves the question of whether Relator Daniel Scheeler is entitled to unemployment benefits. The Minnesota Department of Employment and Economic Development issued an initial determination that Scheeler was disqualified from receiving benefits because he refused an offer of work after he participated in the leave program. Scheeler appealed and after a de novo evidentiary hearing, a department unemployment law judge modified the determination, holding that the leave program constituted a voluntary leave of absence, and that Scheeler therefore was ineligible during the time he was on leave, and that he was disqualified from receiving benefits after he quit his employment by refusing recall. (Appendix to Department's Brief, A3-A8) Scheeler filed a request for reconsideration, and the ULJ affirmed the initial decision. (Appendix to Department's Brief, A1-A2)

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Scheeler under Minn. Stat. § 268.105, subd. 7(a) (2004 and Supp. 2005) and Minn. R. Civ. App. P. 115.

III. STATEMENT OF FACTS

Scheeler worked for Sartell Water Controls as a machinist from February 1979 until July 29, 2005. (T.10-12)¹

In the summer of 2005, as a cost-reducing measure, Sartell Water Controls needed to temporarily reduce its workforce, and in lieu of layoffs, it offered what it called a “voluntary layoff” program in which individuals would agree to stop working for 90 days, at the end of which they would be recalled. (T.13) The target was to reduce force by 13 workers out of 160 – slightly less than ten percent – for about three months. (T.14) Because more than 13 people asked to participate in the program and stop working, certain individuals, including Scheeler, were granted the right to the program, primarily according to seniority. (T.14)

On October 19, 2005, slightly less than 90 days after he stopped working, Sartell Water Controls tried to contact Scheeler to return him to work as the agreement called for. (T.16) The employer learned that during his leave, Scheeler had moved to Montana with his wife. (T.16) Because he had moved to Montana, Scheeler was not interested in returning to work and, according to his own description, “quit” his job at that time. (T.22)

¹ Transcript references will be indicated “T.”

IV. ARGUMENT

A. STANDARD OF REVIEW

Effective for unemployment law judge decisions issued on and after June 25, 2005 that are directly reviewed by the Court of Appeals, the legislature restated the standard of review at Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005) as follows:

(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.

B. ARGUMENT FOR NON-ENTITLEMENT TO UNEMPLOYMENT BENEFITS

The purpose of unemployment benefits is set out at Minn. Stat. § 268.03 (2004 and Supp. 2005), which provides in part:

“* * * Economic insecurity due to involuntary unemployment of workers in Minnesota is a subject of general concern that requires appropriate action by the legislature. The public good will be 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. * * *.”

1. From July 29, 2005 until October 19, 2005, Scheeler was on a voluntary leave of absence.

In furtherance of the purpose behind unemployment benefits, the legislature enacted § 268.085; subd. 13a (2004) which provides in part:

“(a) An applicant on a voluntary leave of absence shall be ineligible for benefits for the duration of the leave of absence. An applicant on an involuntary leave of absence shall not be ineligible under this subdivision.

A leave of absence is voluntary when work that the applicant can then perform is available with the applicant’s employer but the applicant chooses not to work.

The ULJ found that Scheeler was on a voluntary leave of absence. There is ample evidence to support the ULJ’s conclusion.

It should first be noted that both Sartell Water Controls and Scheeler refer to his leave period as a temporary “voluntary layoff.” Minnesota law does not recognize the concept of a “voluntary layoff,” given that the entire purpose of the system is to provide benefits to applicants whose separation from employment is *involuntary*.

Moreover, this court has had occasion to consider several almost identical scenarios over the last several years, and in those cases, it has found that programs that achieve a necessary temporary reduction in force by allowing employees to elect to stop working for a period of time constitute voluntary leave of absence programs.

Northwest Airlines, in particular, has made extensive use of such programs in recent years. Just like the program in this case, the Northwest programs were

made available in order to reduce costs by temporarily reducing workforce. Just like the applicant in this case, the Northwest applicants were more senior employees who volunteered to stop working temporarily in order to prevent actual layoffs among more junior staff. Just like the applicant in this case, the Northwest applicants could have continued working themselves had they not chosen to stop. Just like the applicant in this case, the Northwest applicants relied on the fact that they took leave with the understanding that they would collect unemployment. This court nevertheless held in every case that the employees were on voluntary leaves of absence and not eligible for unemployment benefits. *See DuSchane v. Northwest Airlines*, No. A03-1252 (unpublished, March 16, 2004) (Appendix to Department's Brief A9-A14); *Ciali v. Northwest Airlines*, No. A03-1091 (unpublished, May 4, 2004) (Appendix to Department's Brief A15-A20); *McClure v. Northwest Airlines*, No. A03-1261 (unpublished, June 8, 2004) (Appendix to Department's Brief A21-A24; and *Detert v. Northwest Airlines*, No. A04-703 (unpublished, November 16, 2004) (Appendix to Department's Brief A25-A27). The same result as held in each of those cases is dictated here.

There is only one noticeable difference between the program here and the Northwest programs that this court has repeatedly ruled upon: the name that was given to the program. Northwest called its volunteer program a "voluntary leave of absence," while Sartell Water Controls called its volunteer program a "voluntary layoff."

For the purposes of the statute, the programs are identical. What is important is not whether it is referred to as a “layoff” or a “leave”; what is important is that it is entirely *voluntary*. In both cases, “work that the applicant can then perform is available with the applicant’s employer but the applicant chooses not to work.” This is the definition of a voluntary leave of absence. Scheeler does not deny that he could have continued working if he had not chosen to leave. He was, under the statute, on a voluntary leave of absence.

This result is consistent with the policy underlying the unemployment insurance program, which is to assist those who experience “involuntary unemployment.” *See* Minn. Stat. §268.03. It is inconsistent with that purpose to pay benefits to individuals whose unemployment is entirely of their own choosing. Scheeler testified that he decided to participate in the program because he “just decided to take it,” at which point he and his wife moved to Montana as they had long talked about doing. (T.21) There was no need for Scheeler to be out of work; he could have continued his employment uninterrupted had he not chosen to sign up for the leave program.

The result of a holding in this case that Scheeler was not on a voluntary leave of absence but instead had been laid off would be that if Northwest Airlines in the future implements the same program it has used before, but calls it a “voluntary layoff,” its employees will get benefits, but if it calls the program a “voluntary leave of absence,” its employees will not get benefits. This allows pure manipulation of the unemployment system by employers in that it bases benefit

decisions on program nomenclature, which is both unfair and inconsistent with the law.

This court recently considered another so-called “voluntary layoff” situation in another unpublished case, *Gephart v. Safety Signs, LLC*, No. A05-2100 (unpublished, April 25, 2006) (Appendix to Department’s Brief A28-A31) in which an employer that had a reduced workload during its off-season managed its workforce by offering employees a choice between working in the shop over the winter and electing to be “laid off” and collect unemployment benefits. Not only did the court conclude in that case that whether the employer and employee called the situation a “layoff” did not determine whether it was one, but it specifically pointed out that “employers do the system a disservice by permitting employees who could be working to choose not to work, claim that they have been laid off, and apply for benefits.” *Id.* at n.1. The court also noted that the practice is arguably a violation of Minn. Stat. § 268.069, subd. 2 (2004) providing that “any agreement between an applicant and an employer shall not be binding on the commissioner in determining an applicant’s entitlement” to benefits.

The apparent disregard for the law is even clearer in this case, in which the union and the employer apparently entered into a contract with an entirely void and unenforceable provision stating that a voluntary layoff “shall not disqualify employee for Unemployment Compensation benefits.” (Return-4) The union contract is not part of the record in this case, because it was not offered at the hearing, but only as part of the request for reconsideration, but it is troubling that

the union and the employer attempted to bargain over a matter neither controls. Neither the union nor the employer controls who does and does not collect unemployment benefits, and an agreement that a leave will or will not “disqualify” an employee raises issues of whether the agreement in fact tacitly calls for employers to be less than candid in describing the actual circumstances of an employee’s departure or to cooperate with employees to try to secure benefits when they would not otherwise be available.

It should be noted that the relevant statutes specifically provide that employers do not have the ability to allow the payment of unemployment benefits to employees who do not qualify under the law. Minn. Stat. § 268.069, subd. 2 (2004) provides:

“Unemployment benefits are paid from state funds and shall not be considered paid from any special insurance plan, nor as paid by an employer. An application for unemployment benefits shall not be considered a claim against an employer but shall be considered a request for unemployment benefits from the trust fund. The commissioner has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal. * * *.”

Allowing employers to willingly “go along” with payment of benefits to employees who do not qualify, or to manipulate eligibility by calling what are clearly voluntary leave programs “voluntary layoffs” would have serious consequences for the unemployment benefit program. Contrary to common understanding of the system, employers often do not cover all the costs of the benefits their employees receive. Employer unemployment tax rates are subject to

a statutory maximum, and once that maximum is reached, those employers do not pay more, no matter how much their employees collect. *See* Minn. Stat. § 268.051, subd. 3(b) (2004). The costs of benefits paid to employees of those employers beyond what is collected through the maximum tax rate simply come out of the unemployment insurance trust fund, and are ultimately paid for by other employers across the system. About 5 percent of Minnesota employers, representing about 20 percent of all Minnesota employment (because many of the involved firms are large) are already at the statutory maximum, and the trust fund currently subsidizes benefits paid to the employees of those employers in the amount of approximately \$150 million per year.

None of this precludes employers from paying employees during the off-season, or would preclude Sartell Water Controls from paying a reduced amount to Scheeler while he was on leave. If an employer wants to pay employees a reduced stipend to stop working temporarily, it is free to do so by keeping them on the payroll. But employers do not have the authority, nor should they, to create a program that amounts to a giveaway of the trust fund's money, which is one reason the statutes make clear that the law, not the wishes of the employer, controls whether an employee can collect.

2. On October 19, 2005, Scheeler quit his job.

Rather than return from leave, Scheeler chose to quit his job, as he himself testified at the hearing. (T.22)

Under Minn. Stat. §268.095, subd. 1, individuals who quit are disqualified from receiving benefits except under certain circumstances that no one argues apply to this case. The statute defines “quit” at Minn. Stat. § 268.095, subd. 2 (2004). That subdivision provides:

Subd.2. Quit defined.

(a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.

(b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, shall be considered to have quit the employment.

* * *

When Scheeler told his employer that he would not be returning to work at the end of his leave, he effectively quit his employment. His employer had already recalled him for work, and he refused, saying that he no longer wanted to work for the company. This constituted quitting, and he is disqualified from receiving benefits after October 19, 2005 as a result. *See Hirt v. Lakeland Bakeries*, 348 N.W. 2d 400 (Minn. App. 1984) (Failure to return to work at the end of a leave of absence is a quit of employment.)

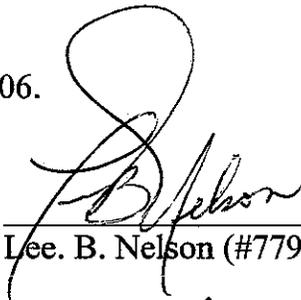
Scheeler was voluntarily, not involuntarily, unemployed. There was never any need for him to lose employment, had he not volunteered to stop working. Paying him benefits is contrary to the purpose of the unemployment benefit program, and the decision of the ULJ should be affirmed.

V. CONCLUSION

Scheeler volunteered for a leave of absence, at the end of which he quit his job. Under the statute, he is therefore ineligible for unemployment benefits during the leave period and disqualified for the period after he quit.

The department respectfully requests that the Court affirm the agency decision.

Dated this 30th day of June, 2006.



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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).