

NO. A08-1587

State of Minnesota  
**In Court of Appeals**

Bradley Bangtson,

*Relator,*

vs.

Allina Medical Group,

*Respondent,*

and

Department of Employment and Economic Development,

*Respondent.*

**RELATOR'S BRIEF AND APPENDIX**

CHESTNUT & CAMBRONNE, P.A.  
Dennis B. Johnson (#124564)  
204 North Star Bank Building  
4661 Highway 61  
White Bear Lake, MN 55110  
(651) 653-0990

*Attorney for Relator*

FELHABER LARSON FENLON  
& VOGT, P.A.  
Robert L. Bach  
220 South Sixth Street, #2200  
Minneapolis, MN 55402  
(612) 339-6321

*Attorney for Respondent Allina Medical Group-  
Cambridge Clinic*

DEPARTMENT OF EMPLOYMENT  
AND ECONOMIC DEVELOPMENT  
E200 – First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101

*Respondent Department*

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).

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES .....iii**

**STATEMENT OF THE ISSUES .....1**

**STATEMENT OF THE CASE .....1**

**STATEMENT OF FACTS AND PROCEDURAL HISTORY .....2**

**ARGUMENT .....5**

**Standard of Review .....6**

**The Unemployment Law Judge committed an error of law in  
determining that Dr. Bangtson was terminated effective July  
20, 2007 .....8**

**The facts assumed by the separation agreement  
require a conclusion that Dr. Bangtson would  
otherwise be terminated on July 16.....9**

**Allina’s actions dictate the conclusion that Dr.  
Bangtson was fired as of July 16.....12**

**Dr. Bangtson cannot be disqualified from receiving benefits  
due to actions that took place after discharge .....16**

**Disqualifications from benefits should be narrowly  
applied so as to effectuate the purpose of the  
Minnesota Unemployment Insurance Law .....17**

**Even if it is assumed that Allina made an offer of  
continuing employment through July 20, the ULJ erred  
in denying benefits after that date .....18**

**Denying Dr. Bangtson the unemployment benefits he  
earned was punitive, and outside the purpose of the  
law.....22**

**CONCLUSION .....24**

## TABLE OF AUTHORITIES

### State Cases:

|   |               |
|---|---------------|
| <i>Anderson v. Twin City Rapid Transit Co.</i> , 250 Minn. 167, 84 N.W.2d 593 (1957).....               | 15            |
| <i>Baron v. Lens Crafters</i> , 514 N.W.2d 305, 308 (Minn. App. 1994).....                              | 19            |
| <i>Fiskewold v. H.M. Smyth Co., Inc.</i> , 440 N.W.2d 164 (Minn. App. 1989) .....                       | 1, 18, 19, 22 |
| <i>Hendrickson v. Northfield Cleaners</i> , 295 N.W.2d 384 (Minn. 1980) .....                           | 17            |
| <i>Johnston v. Florida Dep't. of Commerce</i> , 340 So.2d 1229 (Fla. Dist. Ct. App. 1976) .....         | 21            |
| <i>Kalberg v. Park &amp; Recreation Bd. Of Minneapolis</i> , 563 N.W.2d 275, 276 (Minn. App. 1997)..... | 8             |
| <i>Moore Assoc., LLC v. Comm'r of Econ. Sec.</i> , 545 N.W.2d 389 (Minn. App. 1996)....                 | 1, 14         |
| <i>Neid v. Tassie's Bakery</i> , 219 Minn. 272, 17 N.W.2d 357 (Minn. 1945) .....                        | 1, 12         |
| <i>Nordling v. Ford Motor Co.</i> , 231 Minn. 68, 77, 42 N.W.2d 576, 582 (Minn. 1950).....              | 17            |
| <i>Reserve Min. Co. v. Anderson</i> , 377 N.W.2d 494 (Minn. App. 1985).....                             | 1, 19, 20     |
| <i>Reserve Min. Co v. Cooke</i> , 372 N.W.2d 796, 798 (Minn. App. 1985).....                            | 19            |
| <i>Smith v. Employers' Overload Co.</i> , 314 N.W.2d 220 (Minn. 1981).....                              | 1, 17         |

### State Statutes:

|   |                         |
|---|-------------------------|
| Minn. Stat. § 268.03 (2006).....                      | 1, 17, 21               |
| Minn. Stat. § 268.095 subdiv. 5 (2006) .....          | 1, 7, 9, 10, 13, 14, 20 |
| Minn. Stat. § 268.095 subdiv. 6(b) (2006) .....       | 3, 8                    |
| Minn. Stat. § 268.095 subdiv. 7 (2006) .....          | 1, 6, 8                 |
| Minn. Stat. §268.069 (2006).....                      | 14                      |
| Minnesota Statute § 268.105 subdiv. 7(d) (2006) ..... | 6, 7                    |

## **STATEMENT OF ISSUES**

### **I. Is termination of employment effective at the time it is related to an employee if there is no further work or pay available?**

Most Apposite Cases:

- *Neid v. Tassie's Bakery*, 219 Minn. 272, 17 N.W.2d 357 (Minn. 1945)
- *Moore Assoc., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389 (Minn. App. 1996)

Most Apposite Statute:

- Minn. Stat. § 268.095 subdiv. 5 (2006)

### **II. Where an employee's misconduct shortens his employment by one day, is the disqualification from all unemployment benefits consistent with the policy underlying the Minnesota Unemployment Insurance Law?**

Most Apposite Cases:

- *Fiskewold v. H.M. Smyth Co., Inc.*, 440 N.W.2d 164 (Minn. App. 1989)
- *Reserve Min. Co. v. Anderson*, 377 N.W.2d 494 (Minn. App. 1985)
- *Smith v. Employers' Overload Co.*, 314 N.W.2d 220 (Minn. 1981)

Most Apposite Statutes:

- Minn. Stat. § 268.03 (2006)
- Minn. Stat. § 268.095 subdiv. 7 (2006)

## **STATEMENT OF THE CASE**

Dr. Bangtson separated from his employment with Respondent's Cambridge Clinic at a time the exact date of which is in dispute. Dr. Bangtson has alleged that he was terminated at the time he received a

notice of separation and a release agreement, while his former employer asserted that this meeting and notice of termination did not sever his employment, but that he was terminated because of an assault against another employee before the effective date of termination. The Unemployment Law Judge found Dr. Bangtson ineligible for unemployment benefits on the basis of the availability of employment in the interim period before his termination became final. Dr. Bangtson disputes his disqualification from benefits and maintains that he was effectively terminated before any alleged misconduct, or in the alternative that he remains entitled to benefits beginning on the date of final termination as stated by the employer.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Dr. Bradley Bangtson was employed by Cambridge Clinic, a subsidiary or division of Allina Medical Group (Allina) from December 1, 2002 until July 19, 2007. (R-2.) On or about April 19, 2007, Dr. Bangtson began a leave of absence to undergo treatment for issues related to narcotics. Dr. Bangtson had diverted narcotics intended for destruction to his personal use, and subsequently underwent treatment for chemical dependency at Hazelden from May 3, 2007 through June 2, 2007. (*Id.* at 2-3.)

Before Dr. Bangtson could return to work following his treatment, a committee consisting of the directors, the president, and lead physicians at Cambridge Medial Center decided that they "were not going to have Dr. Bangtson back." Transcript at 27-28. "On July 12, 2007 Allina Medical Group decided to discharge Dr. Bangtson because the company believed that he was unstable." (R- 3.) There is no indication, and it has not been argued, that this discharge would have rendered Dr. Bangtson ineligible for unemployment benefits absent the circumstances following the meeting notifying him of his termination.<sup>1</sup>

The immediate effect of the committee's decision was that Dr. Bangtson would not be allowed to return to work. A meeting was arranged for July 16 to convey this message, and to present Dr. Bangtson with a separation agreement. Transcript at 31. Dr. Bangtson was told at this meeting that he "was not allowed to return to work, continuing employment was no longer available to him." *Id.* at 32. The separation agreement offered to him, but not signed, stated that his employment would terminate as of July 20, 2007. *Id.*; (R-3.) According to LeeAnn

---

<sup>1</sup> While it was not specifically part of this decision, Dr. Bangtson's actions that led to his initial leave would not be considered disqualifying misconduct under the statute, as there is an exception for "[c]onduct that was a direct result of the applicant's chemical dependency." Minn. Stat. § 268.095(6)(b).

Vitalis, Human Resources Manager of the Cambridge Clinic, Dr. Bangtson's last payroll was the period ending July 13, 2007.<sup>2</sup> Transcript at 32.

Subsequent to his termination, Dr. Bangtson allegedly assaulted his superior, Dr. Dennis Doran.<sup>3</sup> (R-3.) Consequently, Allina Medical Group sent Dr. Bangtson a notice on July 18 that his employment was terminated immediately. (*Id.*) Dr. Bangtson received this second notification of discharge by mail on or about July 19, 2007. (*Id.*)

Dr. Bangtson and Allina Medical Group participated in a hearing concerning Dr. Bangtson's eligibility for unemployment benefits by teleconferences. On April 18, 2008, Unemployment Law Judge Christopherson issued her Findings of Fact and Decision denying Dr. Bangtson's claim. Dr. Bangtson requested a reconsideration of these findings in a timely manner. In an Order dated August 12, 2008, the ULJ stated that Dr. Bangtson was effectively terminated for cause based on misconduct occurring after the July 16 presentation of his termination notice but before July 20, 2007, the date Allina maintained Dr. Bangtson's termination would have become effective. (R-5.) The ULJ asserted that

---

<sup>2</sup> It is not clear from the ULJ's decision or the transcript whether or not Dr. Bangtson was receiving pay prior to July 13. According to the separation agreement prepared by Allina, however, it is clear that Dr. Bangtson had been on unpaid leave beginning June 2, 2007. (R-12.)

<sup>3</sup> For the purpose of this case Dr. Bangtson accepts this as a fact determined by the ULJ, though in no way admits to any assault. Criminal assault charges against Dr. Bangtson were dismissed.

the "separation and release was, in effect, a notice to Dr. Bangtson that his employment would end on July 20, 2007, therefore, on July 16, 2007, continuing employment was available to Dr. Bangtson until July 20, 2007." (R-7.) This appeal followed.

### **ARGUMENT**

Once an employee has been fired, it is not logically possible to fire them again. In this case, the ULJ determined that Allina made the decision to terminate Dr. Bangtson on July 12. (R-3.) This decision was presented to him on July 16, 2007, and it was not a matter for negotiation. (*Id.*); Transcript at 31. At the moment Dr. Bangtson was told he no longer had a job, he no longer had a job; he was not "a little fired" or "partially fired." Dr. Bangtson was "totally fired" as of July 16, because the statutory definition for being discharged had been satisfied, his services were no longer required, he was no longer being paid, and his relationship with Cambridge Medical Clinic was completely over but for the negotiation of severance terms.

The fact that Allina wished to call this something else is not relevant. Shortly after Dr. Bangtson was fired, new grounds arose that the ULJ determined justified discharge, but as his employment had previously been terminated, Allina could not fire him again. As his separation was finished, any act which occurred after that time is irrelevant to the question of

eligibility for benefits. "An applicant may not be held ineligible for unemployment benefits under this section for any acts or omissions occurring after the applicant's separation from employment with the employer." Minn. Stat. § 268.095 subdiv. 7 (2006).

The ULJ committed an error of law in allowing Allina Medical Group to fire Dr. Bangtson twice. This decision is contradicted by established precedent and violates the policy underlying the Minnesota Unemployment Insurance Law. The ULJ's decision should be overturned, and the Court should find that Dr. Bangtson is entitled to the benefits that accrued when he was involuntarily discharged from his employment on July 16, 2007. Even if the Court accepts that Dr. Bangtson's termination was not effective until July 20, 2007, the fact remains that Dr. Bangtson is entitled to the benefits that vested due to his involuntary discharge. It is inequitable, punitive and contrary to the policy of the state of Minnesota to deny Dr. Bangtson these benefits. This Court should reverse this error.

### **STANDARD OF REVIEW**

Dr. Bangtson is not challenging the findings of fact per se, but the conclusions of law. Minnesota Statute § 268.105 subdiv. 7(d) provides the basis for this Court's review of the ULJ Decision:

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... (4) affected by other error of law; 5) unsupported by substantial evidence in view of the entire record as submitted....

*Id.* As the ULJ committed an error of law in determining the date of discharge for Dr. Bangtson, this Court's review is de novo.

The sole issue in this case is whether Dr. Bangtson's employment was effectively terminated before any disqualifying misconduct could occur. There is no dispute regarding the fact that in the meeting of July 16, 2007 Dr. Bangtson was told that he would no longer work at Cambridge Medical Clinic. If he was effectively discharged at the point he was told that his services were no longer required, then he should be eligible for unemployment benefits under Minn. Stat. § 268.095 subd. 5 (2006).

Minnesota Statute § 268.095 subd. 5 states that "A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity." The ULJ erred as a matter of law in determining that Dr. Bangtson was not discharged before any assault of Dr. Doran occurred. The assertion that because "continuing employment" was available to Dr. Bangtson until July 20 he had not yet been terminated as of July 16 is contradicted by the plain

language of the statute. In addition to the plain meaning of the statute, there is clear precedent from this Court that it reviews issues of application of facts to law from Unemployment Law Judge decisions de novo. *Kalberg v. Park & Recreation Bd. Of Minneapolis*, 563 N.W.2d 275, 276 (Minn. App. 1997) (“the ultimate issue of disqualification is a question of law that we review de novo”).

Dr. Bangtson would have been eligible for unemployment benefits if the original termination of July 16 had been the only cause of his severance from Cambridge Clinic. *See id.* at 277-78; Minn. Stat. § 268.095 subdiv. 6(b). If Dr. Bangtson was effectively discharged before the cited misconduct occurred, then the ULJ decision is in contradiction to Minn. Stat. § 268.095 subdiv. 7. Because the ULJ made a mistake of law in applying these statutes to the facts this Court reviews the decision of whether Dr. Bangtson is entitled to benefits de novo.

**I. THE UNEMPLOYMENT LAW JUDGE COMMITTED AN ERROR OF LAW IN DETERMINING THAT DR. BANGTSON WAS TERMINATED EFFECTIVE JULY 20, 2007.**

By the plain meaning of the relevant statute, Dr. Bangtson was terminated when he was told that he would no longer work at the Cambridge Medical Clinic. “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for

the employer in any capacity.” Minn. Stat. § 268.095 subdiv. 5. Dr. Bangtson was no longer allowed to work, and would not be paid for any further service except as part of a separation agreement that was presented to him. Allina maintains that Dr. Bangtson was still an employee after the termination meeting, but as he was no longer working, was not being paid, and had just been told that he would not be working again, this cannot be true.

**A. The Facts Assumed By The Separation Agreement Require A Conclusion That Dr. Bangtson Would Otherwise Be Terminated On July 16.**

The ULJ is incorrect in her understanding that the separation and release agreement served as a notice of a future termination, and did not create an immediate termination. (R-3; R-7.) Dr. Bangtson was not allowed to work prior to the date of the agreement, even after completing the required chemical dependency treatment, and would not be allowed to work in the interim period contemplated by the “agreement.” Transcript at 32. Dr. Bangtson could not work and would apparently not have been paid for working the period from July 16 to July 20 without signing the agreement, so the only fact militating in favor of considering him an employee for the period at issue is that Allina **said** he was an employee. *Id.* (“Q. Was he paid through the 16<sup>th</sup> or through the 20? A. No, because he was not working and he was not on medical leave. But he was still an

employee.”). This is insufficient to overcome the statutory language dictating that Dr. Bangtson had been terminated.

In fact, the separation agreement offered at the July 16 meeting was not so much a termination of an existing contract of employment as an offer of a new contract. The primary consideration for entering into this agreement was not that Dr. Bangtson would leave his position, but that he would “release and forfeit all claims.” This is apparent when viewed in light of the fact that Dr. Bangtson had twenty one days to review the document, or at least seventeen days after he would have no longer been an employee of Allina, according to Allina’s own statements, whether or not he signed the agreement.

Moreover, the proposed agreement **offered** an agreement to consider Dr. Bangtson employed until July 20 and payment for the period up to July 20 in exchange for Dr. Bangtson signing the agreement. He was not otherwise entitled to these things, or they would not have been valid consideration. Allina’s own words, contained in the agreement that they drafted, indicate that Dr. Bangtson was not otherwise entitled to payment until July 20. In fact, there is no indication in the record that he was paid anything after July 13, or for any period after June 2 (which the separation agreement says was the beginning of “unpaid leave.”) (R-12.)

The actions described for each party to the agreement are telling. Dr. Bangtson is agreeing to denote certain periods of time as personal leave and others as periods of employment. Allina is committing to pay a lump sum for a period previously considered unpaid leave and to make certain future payments. The most important clause, however, is the Release of Claims:

In consideration for the amount paid pursuant to this Release, Employee agrees to release and give up any and all Claims against Employer that Employee believes or comes to believe Employee may have in exchange for receipt of such consideration. Employee agrees not to bring any lawsuits, file any complaints or notices, or make any other demands against Employer based on any such Claims. The payment Employee is receiving is a full and fair payment for the release of all such Claims.

(R-13.) The conclusion to be drawn from this is that the employment available to Dr. Bangtson at the July 16 meeting was illusory, and in fact merely part of a package of consideration for this release. If Dr. Bangtson did not sign the agreement, it would be perfectly reasonable to conclude that Allina would not perform its consideration and not consider Dr. Bangtson's employment to be concluded on the 20<sup>th</sup>, nor pay him any compensation supposedly earned until that date. The status quo would be that he was terminated, which in fact and under the statute, he was.

There is no legal significance to the date of July 20, absent the separation agreement. Dr. Bangtson was not working, was not being paid,

and was not expected to return to work. Upon notice of termination, then, there was nothing left for him to do or cease to do, apart from performances detailed in the unsigned separation agreement. "A discharge presumptively means that the employer no longer needs or desires the employee's services; that he is done with him; and that all contract relations between them are at an end." *Neid v. Tassie's Bakery*, 219 Minn. 272, 274, 17 N.W.2d 357, 358 (Minn. 1945). Allina was done with Dr. Bangtson on July 16. Any other agreement had nothing to do with employment, and was merely a risk management decision between parties looking to settle any potential future claims. The ULJ erred as a matter of law in determining that employment was available to Dr. Bangtson until July 20, as this employment was illusory and merely served as offered consideration for a separation agreement.

**B. Allina's Actions Dictate the Conclusion that Dr. Bangtson was Fired as of July 16.**

The terms of the unsigned separation agreement therefore should not affect nor alter the clear message that as of July 16, Dr. Bangtson no longer worked for the Cambridge Clinic. Moreover, upon his refusal to sign the agreement, Dr. Bangtson was asked to leave the premises and told that his belongings would be sent to him, or alternatively that he would be escorted to his office to remove his personal belongings. Transcript at 36.

This immediate severance of all ties furthers the presumption that termination was complete upon notification, that Dr. Bangtson's services were no longer required, and his presence was no longer welcome.

The fact that Allina chose to call the termination date something else should not change any facts of eligibility for unemployment benefits in this case. Clearly at the time he was told he would no longer be employed, whether or not he signed the separation agreement, the definition found in Minn. Stat. § 268.095 subdiv. 5 had been satisfied; the message had been sent and he had been fired. In fact, it is difficult to grasp in what manner Dr. Bangtson would be considered an employee after the meeting of July 16, 2007; he was not being paid, he was not working, and he was not being supervised.

The labels that the parties give themselves is not determinative; the relationship is determined by the law, not the parties. While the totality of circumstances should be considered, the most important factors are the right to control the manner and means of performance and the ability to discharge without incurring liability. However, it is the *right* to control, rather than the exercise of that right, that is determinative.

*Moore Assoc., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 393 (Minn. App. 1996) (citations omitted). Once he was terminated on July 16, Allina had no more right to control Dr. Bangtson.

It is possible that Dr. Bangtson could have agreed to consider himself employed through the week by signing the proposed agreement, and a ULJ could still have considered Dr. Bangtson's employment terminated at a different time. *Id.* ("[W]hether the parties have entered into a contract defining their relationship is not determinative."); *cf.* Minn. Stat. §268.069 (2) ("any agreement between an applicant and an employer is not binding on the commissioner in determining an applicant's entitlement."). But if it is accepted that Allina could assert any date of termination for Dr. Bangtson it chose, even though he was not working and would not be paid, what would prevent Allina from choosing a date far in the future, delaying Dr. Bangtson's eligibility for benefits indefinitely? This could provide Allina with significant and inequitable leverage in negotiating a severance agreement, essentially allowing it to hold up state-mandated unemployment benefits until it gets what it wants.<sup>4</sup> The date of

---

<sup>4</sup> This potential leverage is most likely limited by Minnesota law. Minn. Stat § 268.095 subdiv. 5 creates a de jure discharge based on a layoff of 30 days or more so as to avoid this result and preventing an employer from delaying responsibility for benefits by inaction. The term "layoff" is not defined by statute, but implies a normally temporary absence of work available to be performed or reduction in workforce numbers. *See generally, Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 84 N.W.2d 593 (1957). Nonetheless, for the purpose of this Section, there is no real distinction between an affirmative layoff, as opposed to merely not providing work hours, and a firing. *Reserve Mining Co. v. Cooke*, 372 N.W.2d 796, 798 Minn. App. 1985). According to the proposed separation agreement, Dr. Bangtson was on unpaid leave for more than 30 days

July 20 was merely a proposal as part of a settlement agreement, was never agreed upon, and should not serve as the basis for determining the date of discharge in this case.

The end result for this matter is that Allina and Dr. Bangtson could have made an agreement to consider July 20 his last day as an employee. This would have been the effect of the separation agreement, had it been signed. Allina would have incurred a new obligation to pay Dr. Bangtson as if he were employed until that date, and Dr. Bangtson would have agreed to give Allina a release of claims. This was not an offer of payment in exchange for employment until July 20; this was an offer of consideration in exchange for a release.

It was therefore improper for the ULJ in this case to assert that Dr. Bangtson was an employee until July 20 absent any misconduct. As a matter of law Dr. Bangtson was no longer an employee of Allina Medical Group before any assault occurred, and the offer of employment until July 20 was illusory. The ULJ erred as a matter of law in determining that employment was still available to Dr. Bangtson and the decision denying Dr. Bangtson's unemployment benefits should be overturned. This Court

---

following his release from treatment, so Allina's decision not to provide work during that period could also be considered a discharge.

should find that Dr. Bangtson is entitled to unemployment benefits based upon eligibility arising from an involuntary loss of employment.

**II. DR. BANGTSON CANNOT BE DISQUALIFIED FROM RECEIVING BENEFITS DUE TO ACTIONS THAT TOOK PLACE AFTER DISCHARGE.**

Even if this Court determines that the ULJ was correct in her conclusion that Dr. Bangtson was fired at the meeting on July 16 with an effective date of July 20, this is not dispositive of the issue of eligibility for benefits. The essential fact of involuntary termination is not changed, and therefore the underlying rationale for providing benefits still exists. All that has changed in this case, between the involuntary termination and the later voluntary one, is the timing. In that respect it is significant that this only amounted to one day.<sup>5</sup> To revoke benefits that were heretofore available is both punitive to Dr. Bangtson and a windfall to Allina. This decision does not fit with the purpose of the statutory scheme the Minnesota legislature has developed, and represents an error of law by the ULJ.

**A. Disqualifications from Benefits Should be Narrowly Applied so as to Effectuate the Purpose of The Minnesota Unemployment Insurance Law.**

---

<sup>5</sup> Even though the events at issue occurred on July 16, the ULJ determined that the actual discharge date was when Dr. Bangtson received a termination letter on July 19. Dr. Bangtson's employment was therefore truncated by, at most, one day.

The ULJ's decision to deny Dr. Bangtson benefits ignored the established policy of courts to narrowly apply the unemployment statutes disqualifying workers from receiving benefits.

We have stated on numerous occasions that the unemployment compensation statute is remedial in nature and must therefore be liberally construed to effectuate the public policy of Minn. Stat. § 268.03 (1980) that unemployment reserves be used "for the benefit of persons unemployed through no fault of their own." For this reason the disqualification provisions of the statute are to be narrowly construed."

*Smith v. Employers' Overload Co.*, 314 N.W.2d 220, 221-22 (Minn. 1981) (internal citations omitted); *See also Hendrickson v. Northfield Cleaners*, 295 N.W.2d 384 (Minn. 1980) (allowing benefits rather than strictly applying an availability to accept work principle), *Nordling v. Ford Motor Co.*, 231 Minn. 68, 77, 42 N.W.2d 576, 582 (Minn. 1950) ("It is a general rule that a liberal construction is usually accorded statutes which are regarded by courts as humanitarian or which are grounded on a humane public policy. Where there are disqualifying provisions, the exceptions should be narrowly construed.") (citations omitted). The ULJ's decision ignores the preference for allowing benefits and elevates a one day voluntary truncation of employment to the status of total disqualification. This is not a narrow application of the statutes. This is simply not in keeping with the public policy consistently expressed by these courts.

**B. Even if it is Assumed that Allina Made an Offer of Continuing Employment through July 20, the ULJ Erred in Denying Benefits after that Date.**

If the offer to consider Dr. Bangtson's termination effective as of July 20, 2007 is given weight outside the context of the settlement agreement, then the result under Minnesota precedent would be that Dr. Bangtson is not eligible for benefits for the period between July 19 and July 20. *See Fiskewold v. H.M. Smyth Co., Inc.*, 440 N.W.2d 164, 167 (Minn. App. 1989). In other words, as it is clear that, had he done nothing, Dr. Bangtson would have received unemployment benefits beginning July 20, there is controlling precedent for the proposition that his subsequent actions do not divest him of this right to benefits. Dr. Bangtson cannot gain benefits by ending his employment earlier than his involuntary termination, but he does not lose that which he was already entitled to either.

While Dr. Bangtson has found no case directly on point discussing ineligibility for benefits based on termination for cause after a final notice of termination has been given, there is direct precedent for the analogous situation where an employee quits after termination has been clearly communicated.<sup>6</sup> These cases involving quitting or retirement demonstrate

---

<sup>6</sup> This Court has distinguished misconduct from quitting, in dicta, in one case, *Baron v. Lens Crafters*, 514 N.W.2d 305, 308 (Minn. App. 1994). In

that actions that would otherwise disqualify an employee from receiving unemployment benefits do not undo the underlying fact of termination, and therefore eligibility. *See id.*; *Reserve Min. Co. v. Anderson*, 377 N.W.2d 494, 497 (Minn. App. 1985) (where the employee's decision to retire early after receiving notice of layoff did not disqualify her from receiving unemployment benefits that accrued upon notice of termination); *Reserve Min. Co. v. Cooke*, 372 N.W.2d 796, 798 (Minn. App. 1985) ("Cooke's subsequent retirement did not disqualify him from receiving unemployment benefits.").

In the context of quitting or retiring after a notice of termination, "[t]he fundamental question to be asked is 'Why is the claimant really unemployed?' The claimant is unemployed because of the notification of lay off." *Anderson*, 377 N.W.2d at 497. Whether or not an assault occurs, on either July 16 or July 20 Dr. Bangtson is involuntarily discharged. "We believe that whether or not Anderson's separation was "voluntary" should be determined by the point at which she was notified she would be laid off. At that point, the decision regarding her separation was not voluntary

---

that case, however, the unemployment benefits at issue had not yet vested at the time of the misconduct, because the employee had not actually been discharged (as here and in *Fiskewold*); the employee in *Baron* believed that his employer intended to eliminate his position. It is also significant that the employee in *Baron* was allowed to retain his benefits in keeping with the remedial purpose of the statutes.

on her part." *Id.* Dr. Bangtson is really unemployed because he was fired, and that is why he is entitled to benefits. His actions may have shortened the interim period before discharge, but the fact of discharge, at the time notice was given, is the overriding and determinative factor.

The *Anderson* decision correctly addresses the crucial distinction in the statutes between unemployment that is voluntary and that which is involuntary.<sup>7</sup> Allina's decision to discharge Dr. Bangtson, which was made on July 12 and communicated on July 16, was involuntary for Dr. Bangtson. As of July 16, Dr. Bangtson was going to be involuntarily unemployed either immediately or practically so, irrespective of any intervening voluntary act. Protecting workers from the effects of involuntary separation from employment is the essential purpose of the Minnesota Unemployment Insurance Program. Minn. Stat. § 268.03 (2006). It is not the purpose of these statutes to punish voluntary acts through disqualification, but to remedy situations that are involuntary.<sup>8</sup>

---

<sup>7</sup> A "quit" as defined by statute is clearly a voluntary termination of employment, and the actions that warrant termination for cause are described in terms of being intentional, and therefore voluntary. While the term "voluntary" or "involuntary" is not present in Minn. Stat. § 268.095, the statute that defines separation and discharge, it is the underlying concept implicit in the statutes read as a whole.

<sup>8</sup> Minn. Stat. § 268.095 subdiv. 7 reinforces this policy, specifically forbidding a disqualification from receiving benefits for any "acts or omissions occurring after the applicant's separation from employment with the employer."

If Dr. Bangtson is considered to have disqualified himself from receiving benefits, it is due to a voluntary act. If this voluntary act had been to quit, the least he would be entitled to would be benefits beginning July 20.<sup>9</sup> In *Fiskewold*, this Court surveyed other jurisdictions that had previously reviewed the situation where an applicant for benefits had been prospectively discharged from employment and in the interim period committed a disqualifying act. The Court considered the view of a Florida Court, in *Johnston v. Florida Dep't. of Commerce*, 340 So.2d 1229 (Fla. Dist. Ct. App. 1976), most persuasive.

In a case of that kind, the period of voluntary unemployment is that portion of the notice period (the notice period being the time, if any, between notice of discharge and actual discharge) during which the employee chooses not to work. The employee is ineligible to receive unemployment benefits during the notice period, for he could continue on the job if he wished. The period of involuntary unemployment begins with the date which the employer designated as the termination date when it gave the employee notice. If the employee is otherwise eligible for unemployment compensation benefits, his leaving work after he was given definite notice will not deprive him of those benefits during the period of involuntary unemployment.

---

<sup>9</sup> The ULJ did not address whether Dr. Bangtson's request to clean out his office constituted quitting, which under *Fiskewold* would have allowed Dr. Bangtson to maintain his unemployment benefits and established a timing of separation before the alleged disqualifying misconduct. If this de facto quit severs employment, then Minn. Stat. § 268.095 subdiv. 7 renders the misconduct irrelevant.

*Fiskewold*, 440 N.W.2d at 166 (quoting *Johnston*). As has been discussed above, Dr. Bangtson in fact could not have continued on the job if he wished and the "notice period" in this situation was illusory, but for the purpose of this analysis, if he could have "worked" through the notice period, the result would be benefits beginning July 20 irrespective of an intervening voluntary disqualification.

**C. Denying Dr. Bangtson the Unemployment Benefits He Earned was Punitive, and Outside the Purpose of the Law.**

The *Fiskewold* Court concluded by discussing the essential purpose of unemployment benefits, which is to be remedial, and not punitive, in character.

What we state here is that the better policy is not to require *Fiskewold* to forfeit all legitimately earned unemployment benefits merely because he chose not to work his last two days. We find the interpretation advanced by the employer, requiring complete forfeiture of benefits, has unequitable, if not punitive aspects. Unemployment compensation law need not be construed that harshly to effectuate its purpose.

*Id.* at 167.<sup>10</sup> In this case it is likely, and perhaps understandable, that the ULJ wished to use the unemployment benefits statutes as a means to

---

<sup>10</sup> The *Fiskewold* Court expressly chose not to establish a fixed number of days whereby an employee could quit and maintain benefits, but was focused on the inequity of a situation where two days of work could undo a substantial amount of benefits. Here, Dr. Bangtson gave up only one day of unpaid "employment" and for this lost all of the benefits he had accrued. The absurdity and inequity of this is apparent. If the mail had

punish Dr. Bangtson for his bad behavior. That is not the purpose of this statutory scheme, however, and there are certainly other means of punishing or deterring this sort of behavior. This Court need not fear that allowing Dr. Bangtson to receive unemployment benefits will encourage future acts of violence. Criminal law and tort law, not to mention the diminished prospects for future employment, are designed to deter this conduct.

Minnesota statutes and case law clearly provide that the remedial policy of protecting Dr. Bangtson from involuntary discharge outweighs these concerns in the context that the ULJ should have approached this case. The unemployment statutes should have been applied free of moral judgment, and in furtherance of their particular purpose. In failing to do so, and in failing to apply the rule from *Fiskewold*, the ULJ committed an error, the decision should be overturned, and Dr. Bangtson awarded the benefits to which he is entitled based on his involuntary unemployment.

---

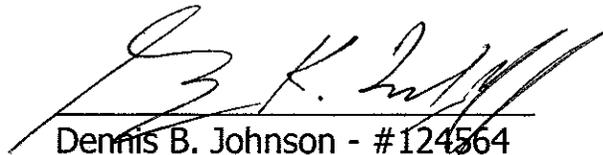
been one day slower, and the termination letter had arrived on July 20, Dr. Bangtson would have been both deemed eligible and ineligible on the same day. If the letter had arrived on July 21, Minn. Stat. § 268.095 subdiv. 7 applies and Dr. Bangtson cannot be divested of his benefits. The *Fiskewold* Court properly avoided such a rigidly formalistic approach, and looked to the equity and policy underlying the statute.

**CONCLUSION**

For the reasons stated above, and in the interest of justice, Dr. Bangtson requests that this Court set aside the decision of the Unemployment Law Judge and determine that he is entitled to unemployment benefits. Dr. Bangtson should have been eligible for these benefits as of the date of his termination, July 16, 2007. If the Court agrees with the ULJ that employment was available to Dr. Bangtson until July 20, 2007, then it should determine that he was eligible for benefits as of that date, and overturn the ULJ's total denial of unemployment benefits.

Dated: 12/2/08

**CHESTNUT & CAMBRONNE, P.A.**



Dennis B. Johnson - #124564  
Gary K. Luloff - #0389057  
204 North Star Bank  
4661 Highway 61  
White Bear Lake, Minnesota 55110  
651-653-0990

**Attorneys for Relator**