

STATE OF MINNESOTA  
IN COURT OF APPEALS

No.: A09-202

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**Michele Soderquist,**  
**Realtor,**

v.

**Universal Services Telecom Tech, Inc.,**  
**Respondent,**  
**and**

**Department of Employment and  
Economic Development,**  
**Respondent.**

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**REALTOR'S INFORMAL 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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## ISSUE

Does Minnesota Statute Section 268.085, Subdivision 9, disqualify an Unemployment Insurance Benefits applicant from receiving more than four times her benefit amount if her child owns a 25% or more equity interest in the employer and the employer has paid the applicant \$7,500.00 or more on average in each of the 16 calendar quarters prior to the effective date of the applicant's benefit account?

*The unemployment law judge held in the affirmative.*

Apposite authority: Minnesota Statutes Section 268.085, Subd. 9; Minnesota Statutes Section 645.16.

## STATEMENT OF THE CASE

This appeal involves the application of Minnesota Statutes Section 268.085, Subdivision 9, which limits unemployment insurance benefits available to certain employees who lose their job and had a familial relationship with their employer and who were not paid the statutorily prescribed minimal dollar amount of wages during the 16 quarters preceding termination of their employment.

This statute should be applied according to its terms and in a manner that fosters, not inhibits, the stated purpose of the Minnesota Unemployment Insurance Law.

In this case it was not so applied. The Realtor, Michele Soderquist, made a few hundred dollars less than the statutorily prescribed \$7,500.00 amount in only one of the 16 quarters preceding termination of her employment. She was paid substantially more than the statutorily prescribed minimum in each of the other 15 quarters, and, on average, was paid more than the statutorily prescribed minimum over the 16 quarters preceding her termination. In light of the foregoing, the statute should be applied so as not to limit the Realtor's unemployment insurance benefits.

## STATEMENT OF FACTS

The Respondent, Universal Services Telecom Tech, Inc. ("Universal Services") employed the realtor, Michele Soderquist ("Soderquist") as a technical service route manager from April 24, 2004 until September 21, 2008. *Transcript p. 9-10.*

Soderquist's daughter and son-in-law own Universal Services. *Transcript p. 11.*

Universal Services permanently terminated Soderquist and did away with her position when one of its clients stopped utilizing its services. *Transcript p. 12.*

Soderquist applied for unemployment insurance benefits and established her account effective September 21, 2008. *Transcript p. 10.* Soderquist's weekly benefit amount at the time she applied for unemployment benefits was set at \$465.00. *Transcript p. 10.*

When it initially considered Soderquist's application, the Department of Employment and Economic Development ("the Department") determined that Soderquist's wages from Universal Services could not be used for unemployment benefits after Soderquist had been paid four times her weekly benefit amount in the benefit year. *See Determination of Ineligibility (10/09/08) Appendix p. A-20.* *See also Amended Determination of Benefits Account (11/04/09) Appendix p. A-22.* In making this determination, the Department relied on Minnesota Statutes Section 268.085 which limited unemployment benefits to business owners and certain family members when they were temporarily unemployed in the business.<sup>1</sup> *See Id.*

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<sup>1</sup> The Department relied on a previous version of Minnesota Statutes Section 268.085, Subd. 9 which provided:

Wage credits from an employer may not be used for unemployment benefit purposes by any applicant who:

1. Individually, jointly, or in combination with the applicant's spouse, parent, or child owns or controls directly or indirectly 25% or more interest in the employer, or is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25% or more interest in the employer; and
2. Is not permanently separated from employment.

Soderquist subsequently appealed the Department's decision on grounds that it had wrongfully concluded her separation from employment was temporary when in fact it was permanent. *See 10/21/08 letter by Soderquist (Hearing Exhibit 5) Appendix p. A-26.* Soderquist argued that in light of her permanent separation, the limitation of Minnesota Statutes Section 268.085 upon which the Department had relied to deny benefits beyond four weeks was not applicable. *See Id.*

In the course of her hearing, the unemployment law judge determined the Department should have used the amended provisions of Minnesota Statutes Section 268.085, Subdivision 9 which went into effect on July 6, 2008. *Transcript p. 11.* The unemployment law judge explained that as amended, the statute now limited benefits to employees of companies owned by family members who were paid less than \$7,500.00 in each of the previous 16 quarters prior to termination of employment. *Transcript p. 16-17.*

According to Universal Services records, Soderquist earned the following amounts in each of the 16 quarters prior to her termination:

1	July – September 2004	\$8,077.10
2	October – December 2004	\$8,076.95
3	January – March 2005	\$6,923.10
4	April – June 2005	\$7,884.60
5	July – September 2005	\$9,423.05
6	October – December 2005	\$9,773.05
7	January – March 2006	\$8,076.90

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This subdivision is effective when the applicant has been paid four times the applicant's weekly unemployment benefit amount in the current benefit year.

Minn. Stat. § 268.085, Subd. 9 (2005).

8	April – June 2006	\$10,192.29
9	July – September 2006	\$9,230.76
10	October – December 2006	\$11,769.22
11	January – March 2007	\$9,730.76
12	April – June 2007	\$12,307.67
13	July – September 2007	\$11,075.91
14	October – December 2007	\$13,923.05
15	January – March 2008	\$11,072.80
16	April – June 2008	<u>\$10,621.10</u>
	Total for 16 quarters:	\$158,158.31

*See Quarterly Payroll Records Appendix p. A-1 through A-19.*

The unemployment law judge ruled that the application of Minnesota Statutes Section 268.085, Subdivision 9, barred Ms. Soderquist from receiving unemployment insurance benefits because her daughter owned more than 25% of Universal Services and in one of the 16 preceding quarters (January – March 2005), Ms. Soderquist earned \$6,923.10, or \$576.90 less than the statutorily required \$7,500.00. *See Quarterly Payroll Records Appendix p. A-1. See also Decision of Unemployment Law Judge (11/17/08) Appendix p. A-27, and Decision of Unemployment Law Judge (01/07/09) Appendix p. A-31.*

In each of these other 15 quarters, Ms. Soderquist earned substantially more than the \$7,500.00.

The total earnings for each of the 16 quarters were \$158,158.31. Dividing this figure by the 16 quarters results in an average for the 16 quarters of \$9,884.89.

### **LEGAL ARGUMENT**

Soderquist's appeal is based on the provisions of Minnesota Statutes Section 268.105, Subdivision 7(d)(1) and (5).

Specifically, the unemployment law judge erroneously applied Minnesota Statutes Section 268.085, Subdivision 9 to deny Soderquist more than four times her unemployment benefit. Moreover, the unemployment law judge's decision to limit Soderquist's benefits in accordance with Section 268.085, Subdivision 9 is unsupported by substantial evidence in view of the entire record as submitted.

Applicants who file for unemployment benefits on or after July 6, 2008, are subject to the amended provisions of Minnesota Statutes Section 268.085, Subdivision 9. *See 2008 Minn. Gen. Laws Chpt. 300 § 13.* Minnesota Statutes Section 268.085, Subdivision 9, provides that wage credits from an employer may not be used for unemployment benefit purposes when the applicant had a 25% or more interest in the employer either individually or in combination with a family member or an applicant who is a spouse, parent, or minor child of an individual who owns or controls a 25% or greater interest in the employer. *Minn. Stat. § 268.085, Subd. 9.* This "disqualification provision" specifically applies to applicants who have been paid five times the applicant's weekly unemployment benefit amount in the current benefit year. *Id.* This disqualification provision specifically does not apply "if the applicant had wages paid of \$7,500.00 or more from the employer covered by the subdivision in each of the 16 calendar quarters prior to the effective date of the benefit account." *Id.*

To deny Soderquist benefits at a greater than four times her benefit amount because in one of 16 quarters she earned \$6,923.10 or \$575.90 less than \$7,500.00 while at the same time in each of the remaining 15 quarters she earned substantially more than \$7,500.00—on an average basis \$9,884.89 in each of the 16 quarters—is an unfair and

inequitable result that is contrary to the stated purpose of Minnesota's Unemployment Insurance Program.

That stated purpose is set forth in the Minnesota Unemployment Insurance Law in the following terms:

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.

*Minn. Stat. 268.03.*

Ms. Soderquist's employment was terminated through no fault of her own. Moreover, the record supports that Soderquist familial relationship with the owners of the company was not a factor in her termination. Ms. Soderquist's employment was terminated because Universal Services' client ended its relationship with Universal Services. In essence, Ms. Soderquist's job had to be eliminated.

There is no provision in Minnesota Statutes Section 268.085, Subdivision 9 which would preclude applying the literal law of averages. The apparent purpose of the amendment was to ensure a benchmark of earnings in order for the employee who happens to have a familial relationship with the employer; Ms. Soderquist clearly meets that standard.

The application and construction of Minnesota Statutes is guided by Minnesota Statute 645.16 which provides:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When words of the law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of the law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be obtained;
- (5) the former law, if any, including other laws upon the same or similar subject;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

*Minn. Stat. § 645.16.*

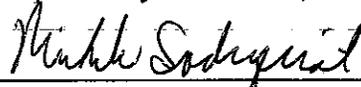
In this case, Minnesota Statutes Section 268.085, Subdivision 9 does not specify how the \$7,500.00 per quarter determination is to be made. By looking at an average over the 16 quarters, the letter of that law is not disregarded. Rather, applying the law in the appropriate and intended manner that fulfills the stated purpose of Minnesota's Unemployment Insurance Law.

**CONCLUSION**

The Court should remand the matter back to the unemployment law judge for determination with respect to the benefits due Soderquist without the limitation imposed by Minnesota Statutes Section 268.085, Subdivision 9.

Dated: 4-27-09

Respectfully submitted,



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