

STATE OF MINNESOTA
IN COURT OF APPEALS



CASE TITLE:

Sara K. Irvine,
Relator,

RELATOR'S INDEX TO BRIEF

vs.

COURT OF APPEALS #: A09-1155

- 1) St. John's Lutheran Church of Mound,
Respondent,
- 2) Department of Employment &
Economic Development,
Respondent,

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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).

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Sara K. Irvine,
Relator,

RELATOR'S NOTICE OF BRIEF

vs.

COURT OF APPEALS #: A09-1155

- 1) St. John's Lutheran Church of Mound,
Respondent,
- 2) Department of Employment &
Economic Development,
Respondent,

NOTICE OF RELATOR'S BRIEF

TO: Respondent Department of Employment & Economic Development and
Respondent St. John's Lutheran Church of Mound:

The following brief is being submitted to the Minnesota Court of Appeals on this date,
without request for oral argument.

STATE OF MINNESOTA

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Sara K. Irvine,
Relator,

RELATOR'S BRIEF

vs.

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- 1) St. John's Lutheran Church of Mound,
Respondent,
- 2) Department of Employment &
Economic Development,
Respondent,

Whereas, Relator was terminated from her employment with St. John's Lutheran Church of Mound (hereinafter "St. John's") on February 27, 2009. Relator filed for unemployment benefits on March 2, 2009 and received a Determination of Benefits Account, which indicated the Relator would not receive any benefits. Relator filed a request for reconsideration to the decision in a timely manner and again received an unfavorable decision. Relator then filed a writ of certiorari on the Department of Employment and Economic Development (hereinafter "Department") and St. John's in a timely manner.

Whereas, Relator meets all the eligibility conditions as laid out in Minn. Stat. § 268.085. No where in this section of the statute does it state the employee must have been employed in covered employment in order to collect benefits.

Whereas, Minn. Stat. § 268.069, subd. 1, states the commissioner **MUST** (emphasis added) pay unemployment benefits from the trust fund to an applicant who has met each of the following requirements:

- (1) the applicant has filed an application for unemployment benefits and established a benefit account in accordance with section 268.07;
- (2) the applicant has not been held ineligible for unemployment benefits under section 268.095 because of a quit or discharge;
- (3) the applicant has met all of the ongoing eligibility requirements under section 268.085;
- (4) the applicant does not have an outstanding overpayment of unemployment benefits, including any penalties or interest; and
- (5) the applicant has not been held ineligible for unemployment benefits under section 268.182 because of a false representation or concealment of facts.

Again, nowhere in Minn. Stat. § 268.069, subd. 1, does it mention any thing about covered employment being the only employment allowed to collect benefits.

Whereas, Relator filed an application for unemployment benefits and tried to establish a benefit account. Since St. John's did not provide wage detail information, Relator provided that to the Department.

Whereas, Minn. Stat. § 268.045 requires that the commissioner shall maintain a tax account for each taxpaying employer. St. John's is a taxpaying employer as it pays the employer portion of the lay employee's medicare and social security taxes. Therefore, St. John's should have been required to set up an account and report wage information to the commissioner.

Furthermore, Relator searched Minn. Stat. § 268 on the Minnesota Legislature-Office of the Revisor of Statutes website and could not find any instance where the statute states noncovered employment is not eligible for benefits.

Whereas, Minn. Stat. § 268.03 states that economic insecurity because of involuntary unemployment of workers in Minnesota is a subject of general concern that requires appropriate action by the legislature. The public good is 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. Relator was unemployed through no fault of her own. Again, the public good does not distinguish between covered and noncovered employment.

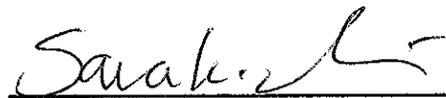
Whereas, Minn. Stat. § 268.068 requires that each employer must post and maintain printed statements of an individual's right to apply for unemployment benefits in places readily accessible to workers in the employer's service. Relator questions why there is no statute that requires the employers who have employees working in noncovered employment to notify the individuals of their non-eligibility to collect unemployment benefits.

Whereas, St. John's pays medicare and social security taxes on behalf of their lay employees and the employee has to pay income tax on wages earned in the employment of a noncovered employer, therefore, the assumption of an average reasonable worker would be that they are able to collect unemployment benefits if they are terminated for reasons other than cause.

Whereas, Minn. Stat. 268.031 Subd. 2, states that this chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.

Whereas, Relator feels that her arguments as noted above show a preponderance of the evidence in support of Relator's claim for unemployment benefits. The only legal conclusion the Department has made is that St. John's is a church exempt from income tax under section 501(a) of the Internal Revenue Code.

Dated this 26th day of September, 2009



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