

STATE OF MINNESOTA
COURT OF APPEALS
CASE NO. A09-1957

James Lawrence

Relator,

v.

Ratzlaff Motor Express, Inc.,

Respondent-Employer,

and

**Minnesota Department of Employment
and Economic Development,**

Respondent.

RELATOR'S INFORMAL REPLY BRIEF

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STATE OF MINNESOTA
IN COURT OF APPEALS

CASE NO. A09-1957

James Lawrence,

Relator,

INFORMAL REPLY BRIEF OF RELATOR

-vs-

Ratzlaff Motor Express, Inc.

Respondent-Employer,

and

Minnesota Department of Employment
and Economic Development,

Respondent.

**Respondent Department of Employment and Economic Development
misstates the standard for determining whether Relator's loss of his license
constituted misconduct.**

Respondent argues in its brief that, in essence, any conduct that results in the loss of a license necessary for work constitutes misconduct and disqualifies the individual for unemployment benefits, citing *Markel v. City of Circle Pines*.¹ However, *Markel* does not stand for this proposition without exception and the facts of that case are significantly different. *Markel* involved a city truck driver who was discharged after his license was revoked following his plea of guilty to the charge of driving his own vehicle while under the influence. The court held that conduct resulting in the loss of a license necessary for

¹479 N.W.2d 382 (Minn. 1992)

normal job duties is misconduct within the meaning of the court's definition of that term in *Tilseth v. Midwest Lumber Co.*²

But the court in *Markel* went on to specifically note that there are exceptions to the standard in *Tilseth* and *Markel*'s behavior - "drinking and driving" - did not come within the "*Tilseth* exceptions for inadvertence, negligence or errors in judgment."³ In particular, the court in *Markel* noted that "some unintentional circumstances which lead to loss of a necessary occupational license might be treated differently." *Id.*

The statutory definition in Minn. Stat. § 268.095, subd. 6 of the term "misconduct" cited in *Tilseth* and *Markel* has been revised often since the decisions in those cases but is not substantively different. The 2008 version of that statute which is applicable to this case, as noted in Respondent's brief, defines misconduct as "intentional, negligent or indifferent" conduct that displays a "serious violation of the standards" the employer has the right to expect of its employees or that shows a "substantial lack of concern for the employment." This standard is not consistent with Respondent's argument that any conduct that results in the loss of a drivers license constitutes misconduct. A more thorough and complete review of the facts is required to determine whether "unintentional" conduct that leads to the loss of a license should, in the words of *Markel*, "be treated differently."

²295 Minn. 372, 204 N.W.2d 644 (1973)

³479 N.W.2d at 385 (quoting from *Tilseth*, 295 Minn. at 374-75, 204 N.W.2d at 646)

The Unemployment Law Judge decision that Relator's actions constituted misconduct is not supported by the record.

Respondent's argument that Relator "neglected" to pay his child support and that he "blames" his employer for failing to tell him that his support wasn't being fully paid is not supported by the record. The facts do not show that Relator had actual or even imputed knowledge of what amount of child support was being paid by his employer. Moreover, he did not claim that any shortfall in his support payments was the fault of his employer. His only argument was, and is, that he was not aware that his child support was not being paid by his employer and that he was not notified by State of Minnesota, nor did he have any actual knowledge, that his license was at risk as a result.

Respondent argues that because Relator offered two pay stubs at his hearing that he had actual knowledge, or should have known, that his child support wasn't being paid. However, this evidence shows no such thing. The pay stubs in the record are dated January 2, 2009 and February 4, 2009. Each covers a one week pay period a full month apart. Both show deductions for child support.. It is undisputed that Relator went to court in February 2009, after these pay stubs were issued, to reduce his child support. There was no further evidence to show (1) what additional amounts Relator earned in the weeks and months from that time until the suspension of his license in April 2009, (2) what amounts of child support were paid by his employer from his earnings, and (3) when and how often Relator was informed about his earnings and the amounts being applied to his

child support. There is thus no evidence to support the Respondent's claim that Relator either knew or should have known that his support wasn't being paid.

It is not disputed that Relator was an over-the-road driver and was often on the road for weeks at a time. Relator's written statements in the record and his testimony at the hearing establish that he was in fact not aware that his employer was not making his child support payment through deductions from his earnings and that his license had been suspended. Perhaps most telling is that his employer, Ben Ratzlaff, did not dispute that Relator was not informed about any shortfall in his support payments and that Relator was not aware of the license suspension until Ratzlaff himself was so informed by the State of Minnesota and called Relator.⁴ Transcript p. 9.

There is no evidence to support the claim that Relator acted intentionally or did anything that amounted to misconduct, i.e. that his acts were a "serious violation of the standards" his employer could expect of him or showed a "lack of concern" for his employment under § 268.095, subd 6. For this reason, the decision of the Unemployment Law Judge should be reversed.

Respondent's argument that the Unemployment Law Judge (ULJ) did not fail to develop the record is not consistent with applicable law.

⁴It bears repeating here that Relator did not "blame" his employer as asserted by Respondent for this problem, or claim that his employer or his payroll service acted wrongfully by not making his child support payments. He clearly believed these payments were being made automatically from his earnings and, while they were not legally obligated to do so, they did not in fact directly inform him of this problem.

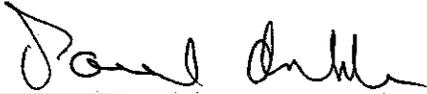
Respondent argues that the ULJ was not obligated to inquire of Relator's employer whether he had informed Relator about the shortfall in his child support payments or to inquire of Relator as to what information was available as to why he had not been notified by the State of Minnesota about the suspension of his drivers license. But these inquiries are clearly relevant to the factual issue of whether Relator was aware, or should have been aware, that his child support apparently wasn't being fully paid. This in turn is critical in determining whether, under the statutory definition of "misconduct," he was engaging in "intentional" conduct that he knew would put his license to drive at risk or that he thereby showed a "lack of concern" about his employment or that this constituted a "serious violation" of the standards his employer could expect of him.

In fact, the failure of the ULJ to make these inquiries appears in retrospect to flow from the same sort of legal analysis that is found in Respondent's argument, i.e., that the suspension of Relator's license was solely his own fault and no further inquiry regarding the circumstances leading to that suspension are relevant in determining whether Relator's actions constituted misconduct under § 268.095, subd 2. But as the holding in *Markel* makes clear, the circumstances leading to the suspension of an employee's drivers license are clearly relevant and must be considered in determining whether misconduct has occurred. The ULJ failed to make a complete and thorough inquiry of those circumstances and as a result his decision on whether Relator's actions were misconduct lacks support in the record.

Conclusion

For the reasons set forth above, the decision of the ULJ in this case should be reversed or remanded for further proceedings.

Respectfully Submitted,



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