



STATE OF MINNESOTA

COURT OF APPEALS

CASE # A11-954

John Stassen

Relator,

v.

Lone Mountain Truck Leasing LLC

Respondent- Employer

And

**Minnesota Department of Employment
and Economic Development**

Respondent

And

Minnesota Attorney General

**Attorney for Respondent
Minnesota Department of Employment
and Economic Development**

RELATOR'S INFORMAL BRIEF AND APPENDIX

John Stassen
7621 Banning Way
Inver Grove Heights, MN 55077
(651) 455-5403
Relator

Lone Mountain Truck Leasing LLC.
57575 190th St.
Pacific Junction, IA 51561

Respondent - Employer

Minnesota Department of Employment and
Economic Development
E-200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101

Respondent

Minnesota Attorney General
900 Bremer Tower
445 Minnesota St.
St. Paul, MN 55101

Attorney for Respondent
Minnesota Department of Employment
and Economic Development

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

JOHN STASSEN

Relator

vs.

COURT OF APPEALS # A11-954

LONE MOUNTAIN TRUCK

LEASING LLC

Respondent - Employer

DATE OF DECISION: MAY 2, 2011

and

DEPARTMENT OF EMPLOYMENT &

ECONOMIC DEVELOPMENT

Respondent

**RELATOR'S INFORMAL
BRIEF**

and

MINNESOTA ATTORNEY GENERAL

Attorney for Respondent Minnesota Department of

Employment and Economic Development

I. INTRODUCTION

RELATOR, John Stassen (“Stassen”), respectfully submits this Informal Brief in support of Stassen’s appeal from an Order denying Stassen’s Request for Reconsideration (REAPP 3) in this case. ¹

¹ Relator will abbreviate each reference to his Appendix REAPP followed by a number indicating the sequence in which it appeared in the brief and then followed by the page number as enumerated in the Appendix. References to excerpts from the transcript will be assigned a REAPP number at the end of the Index, abbreviated RETR followed by a number indicating the sequence in which they appeared in the brief, and then followed by the corresponding Page number enumerated in the transcript itself.

II. STATEMENT OF THE CASE

Relator is appealing from an Order by a Minnesota Department of Employment and Economic Development (hereinafter DEED) Unemployment Law Judge (hereinafter ULJ) (REAPP 3 Pages 4, 5, 6, 7, 8, 9, 10, & 11) affirming an Order from a fellow DEED ULJ (REAPP 10 Pages 22, 23, 24, 25, 26, & 27), denying Relator's Request for Reconsideration of the earlier ULJ's Findings and Decision (REAPP 11 Pages 28, 29, 30, 31, 32, 33, & 34) which, in turn, emanated from an evidentiary hearing that the earlier ULJ had conducted subsequent, in turn, to an Order Setting Aside Findings of Fact and Decision and Order for Additional Hearing (REAPP 9 Pages 20 & 21) by a third ULJ who, in turn, reversed himself from his earlier Dismissal of a Request for Reconsideration by Respondent-Employer, Lone Mountain Truck Leasing, LLC (hereinafter LMTL), (REAPP 7 Pages 16, 17, & 18) which, in turn, had been submitted by LMTL approximately five (5) months after a mailing of Relator's Eligibility Determination was returned to DEED as undeliverable. Said mailing contained an earlier Determination of Eligibility (REAPP 5) by DEED deeming Relator eligible to receive unemployment compensation benefits.

The expectation and anticipation of a termination motivated Relator to send his manager an e-mail on May 26, 2010, (REAPP 4), expressing discomfort with the recent lack of support being given him by management and the difficulty continuing to perform

given recent deterioration in relations between management and himself. The e-mail was carefully worded and was sent in an effort to save Relator's job or, in the alternative, to spark negotiations between himself and Wayne Hoovestol, LMTL's President, for a mutually agreeable amount of severance pay in the event of an anticipated termination. The effort proved successful toward achieving the latter objective as the Relator and Mr. Hoovestol later settled for a mutually agreeable amount of compensation for severance.

Relator contends that the earlier ULJ erred in her Decision that the e-mail constituted a resignation as opposed to the company having seen and seized a golden opportunity to capriciously declare it a resignation. Relator contends that he had not resigned but that he was terminated after the e-mail was sent.

Relator further contends that the final ULJ, who affirmed the earlier ULJ's Decision and whose Order is herewith being appealed, erred in earlier reversing himself by setting aside Findings of Fact and Decision and in ordering an Additional Hearing and by basing those determinations in his accompanying memorandum (REAPP 9) upon the incorrect assertion that the mailing of Relator's Determination of Eligibility which was returned to DEED as undeliverable, and that LMTL claims it did not receive, was "due to Department error". (REAPP 9 Pages 20 & 21)

While he erred in his Order to Set Aside, he had been correct in his earlier Order to Dismiss LMTL's appeal for the reasons that he cited in his Decision to Dismiss (REAPP 7 Page 2).

Relator contends that, if, in fact, LMTL did not receive the Notice, the fault for the

alleged non-receipt was LMTL's for failure to fully and procedurally properly execute and submit a change of address form to DEED and not "due to Department error".

Further, Relator contends that the ULJs involved erred in assuming and exercising jurisdiction herein and/or in affirming that jurisdiction in light of the untimely filing having been the fault of LMTL, not DEED.

Further, Relator contends that the ULJ who conducted the hearing erred in her failure to instruct Relator as to the burdens of proof required at the hearing and also in her failure to assist Relator in the hearing.

III. STATEMENT OF ISSUES

A. Did the ULJ who conducted the hearing prejudice Relator's substantial rights by:

- i.) Assuming and exercising authority or jurisdiction in excess of the Department's statutory authority or jurisdiction?
- ii.) Making her Findings and Decision upon unlawful procedure?
- iii.) Making her Findings and Decision unsupported by substantial evidence in view of the entire record as submitted ?
- iv.) Making her Findings and Decision arbitrarily or capriciously?

(REAPP 19 Page 44) (Minnesota Statutes 268.105 Subd. 7 (d) 2, 3, 5, & 6)

B. Did the ULJ err in failing to consider the preponderance of the evidence in the record, followed by a rationalization of her mistaken predetermination that the e-mail constituted a "quit"³³ or a resignation, by "cherry picking"³³ several phrases and clauses,

OUT OF CONTEXT, from the e-mail, rather than considering the entirety of the missive and then making a determination as to its intent?

C. Did the ULJ err in her decision to entertain an objection by LMTL to Relator's Determination of Eligibility to receive unemployment compensation benefits when LMTL's appeal was filed approximately six (6) months after an ill fated mailing?

D. Did the ULJ err in her determination that LMTL's time to file an objection had never begun to run, thereby allowing the company an approximate five (5) month extension to file its objection and waiving DEED's 30 day rule?

E. Did the ULJ err in her determination that the mailing having been sent to the Las Vegas address was DEED's fault, not LMTL's, regardless of the facts that :

i.) Said address was the last known address DEED had in its data base for LMTL at the time of the mailing; and,

ii.) Lynda Kuhn (hereinafter Kuhn), LMTL's HR Director, indicated which entity was at fault for the usage of the stale address, and LMTL's non-receipt of the mailing, with TWO admissions as to a lack of knowledge and/or awareness of what was required of LMTL in order to effect a change of address in DEED's data base and LMTL's consequent failure to fully and procedurally properly execute change of address forms? (REAPP 8) and (REAPP 18)

F. Did the ULJ err in assuming and exercising jurisdiction in the matter in light of the fact that the filing of LMTL's appeal was untimely, that the determination, in accordance with Minnesota Statutes, clearly stated that it would be **final** unless an appeal was filed

within 20 calendar days from the date of mailing, that The Minnesota Supreme Court has held that the statutory time period for appeal is absolute, regardless of any asserted mitigating circumstances, that it was not filed within the time period required by law, and that the ULJ has no legal authority to hear and consider the appeal, the Determination of Eligibility having become **final** by operation of law ? (REAPP 7)

G. Did the ULJ err in failing to assist Relator in the hearing?

IV. STATEMENT OF FACTS

Relator John Stassen was born on January 28, 1936, and is currently 75 years old

He graduated from Cretin High School in St. Paul, MN, in 1952, and received a BA Degree from the University of Minnesota after a three year stint in the Army Security Agency as a Russian interpreter.

He owned and operated a collection agency, Minnesota Business Services, Inc., for about ten (10) years, located in the Pioneer Building in downtown St. Paul, MN, in the 1960s.

During that time frame, he was civically active in St. Paul, served on the Board of Directors of the St. Paul Junior Chamber of Commerce, was selected as the Outstanding member of that Board, and then served as a Vice President of the organization for one year before being named as the General Chairman of the Minnesota Golf Classic, formerly the St. Paul Open, a PGA sponsored tour event.

He was an account executive with Piper, Jaffray, & Hopwood for approximately

the next 20 years and was made a Vice President of the firm during that time frame.

Following a respite from employment, Relator began working for Hoovestol, Inc., a sister company of LMTL, on or about October 5, 2004, as a part time collector for the company.

At that time, the company had about 60 semi trucks leased out to owner operators throughout the country and Relator's job responsibilities were to monitor monthly lease payments on those leases and to execute new leases as they materialized. For approximately the first two years of his employment, Relator was the sole employee of the company, spent roughly twenty (20) to thirty (30) hours a week discharging his duties and responsibilities, and was integral to growing the volume to approximately 200 leases during those two years.

Company management subsequently continued its operations under several different newly incorporated names but Relator's functions remained the same except for the fact that the number of leases under his management consistently continued to grow.

For approximately $5\frac{3}{4}$ years, at which point in time the number of leases had grown to approximately 600 (Relator was responsible for managing about $\frac{1}{2}$ or 300 of them), he worked out of his home per an arrangement and agreement with Wayne Hoovestol, corporate President, utilizing both rather sophisticated computer and company telephone connections. By that time, his weekly work regimen had grown to fifty (50) hours a week or more and he fielded many thousands of phone calls, making himself available "24-7", working with a cell phone for the majority of that time, which he

carried on his person at all times.

During that time frame, Relator enjoyed total support, cooperation, and coordination with company headquarters and management personnel and his work experience with the company was friendly, effective, and productive.

Relator detected during the last three months or so of his employment, a change on LMTL's part toward him, specifically including a withdrawal of support from supervisory company management. He sensed a distancing between those folks and himself that, within three months, degenerated into a complete breakdown in communication and actual sabotage of his collection efforts.

Sensing a plan to "get rid" of him, Relator sent an e-mail to his manager, Derenda Smith (hereinafter Smith), on May 26, 2010, expressing discomfort due to the deterioration in the relationship between Relator and management and difficulty for him to continue to function under the circumstances.

Relator's intent in his wording and in sending the e-mail was to elicit a restoration of the support that he had always enjoyed, thereby hopefully saving his job, or in the alternative, to invite negotiations with Mr. Hoovestol for a settlement amount of severance compensation in the event of termination. The e-mail follows:

Derenda:

You gave me several pieces of misinformation in our phone conversation re: the Joshua accounts. In my opinion, you handled the entire matter very poorly and unprofessionally. You allowed a problem lessee to run a threat, succumbed to the threat, never notified me that the two leases were being moved to JT's queue, and then

made several assertions in our phone conversation that were inaccurate.

Since Wayne has been more than fair with me for the 6 years or so that I've been in his employ, pls accept this e-mail as my assurance that I will be happy to continue in my capacity as long as he, Joe, and Andy would like so that there's no interruption or difficulty as I transition out of LMTL's employ.

If they would be comfortable with a decision to sever immediately, so be it.

While I have diligently and effectively met my responsibilities, including strict compliance with new company policies, for the entire time I've worked for Wayne's firms, there have been several matters in recent weeks between you and me that make continuing on extremely unpleasant.

Here's wishing Wayne, Joe, and Andy well -- it has been a real trip!!

Jack (REAPP 4)

The following day, May 27, 2011, Kuhn phoned Relator . The first words out of her mouth were "We accept your resignation" (REAPP 20 - Page 9 - RETR 1 - Page 24 of transcript)

RELATOR IMMEDIATELY ADVISED Kuhn that there was no resignation in play, that he had grown tired of her twisting and distorting words and terms to suit her purposes, and of her habitual misinterpretations, and hung up the phone .

Within a matter of minutes, Relator's computer connection with the company was

disabled and his company telephone was disconnected. Kuhn and LMTL then declared this parting of the ways between the company and Relator a “resignation” . Relator regards those actions as having been a choice and a decision by the company to sever his employment by termination IMMEDIATELY (an option which he had offered the company in his e-mail).

Relator proceeded to file for unemployment compensation and was deemed eligible on July 13, 2010. (REAPP 5)

Relator routinely and uneventfully received benefit payments until LMTL filed an objection, appealing the Eligibility Determination, APPROXIMATELY SIX (6) MONTHS LATER, on January 6, 2011.

On January 14, 2011, a DEED ULJ dismissed LMTL’s appeal as untimely. (REAPP 7)

LMTL then filed a Request for Reconsideration of the Dismissal (REAPP 8), and on February 24, 2011, the same ULJ who had dismissed the appeal reversed himself and issued an Order Setting Aside Findings of Fact and Decision and ordered an Additional Hearing. (REAPP 9)

In his Order, the ULJ based his reversal upon the premise that the ill fated mailing of Relator’s Eligibility Determination was “Due to Department error”.

(REAPP 9 Page 20)

Another DEED ULJ then granted LMTL an extension of approximately five (5) months, waiving DEED’s 30 day rule, reasoning that DEED had made an error in mailing

the Notice to a wrong address, so that LMTL's time to file its objection had never begun to run.

The ULJ proceeded to schedule and conduct a teleconference hearing involving Relator and two LMTL witnesses, Kuhn and Andy Lucht (hereinafter Lucht), Controller of the firm.

Her Findings and Decision dated March 14, 2011, determined Relator to have been ineligible to receive benefits from the very beginning and ordered Relator to reimburse DEED \$10, 179 in benefits he had received plus found him ineligible for any future benefits. (REAPP 10 Page 26)

In her reasons, the ULJ stated that she interpreted Relator's e-mail to have been a resignation. (REAPP 10 Pages 24 & 25)

There was an approximate eight (8) month period of time between the ill fated mailing and that Decision.

Relator filed a Request for Reconsideration and assignment of a different ULJ to conduct the review (REAPP 11) and was assigned a fellow DEED ULJ .

That ULJ affirmed her fellow ULJ's Findings and Decision on May 2, 2011, (REAPP 3) although the affirmation came down inexplicably over the name of the same ULJ who had dismissed LMTL's appeal previously and subsequently reversed himself.

In his memoranda, that ULJ comments "... Stassen states that LMTL waited several weeks to file the appeal" (REAPP 3) whereas, as the record indicates, the time frame had actually been clearly stated by Relator to have been approximately six (6) months.

Relator is appealing to the Minnesota Court of Appeals, contending that he is eligible to receive all unemployment compensation benefits to which he is, has been, and will continue to be, entitled.

He has been advised by the Office of the Clerk of the Appellate Courts that his case has been assigned Case # A11-954 and that the filing was dated May 25, 2011.

V. ARGUMENT

I. The ULJ erred in her Decision and Order dated 03/14/2011, by failing to comply with Minnesota law, and in either overlooking or ignoring and disregarding a preponderance of the evidence, and in her failure to incorporate basic common sense into her reasoning. The question here is whether a severance that occurred was a resignation or a termination.

Relator argues that the ULJ erred in her Decision that an e-mail (REAPP 4) he had sent, if read in its full context, constituted a resignation.

Statutory Law 2010 MN Statutes 268.105 Subd. 7 (d) (2),(3),(5), and (6) (REAPP 19 Pages 43 & 44) allows The Court of Appeals to reverse a Lower Court's Decision if substantial rights of the Petitioner may have been prejudiced for any of six reasons.

Relator argues that four of those reasons apply in this case; viz., reasons (2), (3), (5), and (6).

Relator further argues that the law, together with a preponderance of the evidence

herein, along with a modicum of common sense, validate Relator's contention that he never, at any time, had any intention of "quitting" or resigning. Quite to the contrary, his primary intent in composing and sending the e-mail at issue was to hopefully save his job.

While LMTL's total motivation with respect to its claim that Relator "quit" is a matter of speculation, the company's hoping, wishing, reaching, and declaring it so, sans any substantiating evidence, in a spiteful, malevolent attempt to convert a termination into a resignation, did not make it a resignation.

Relator argues that his intent in the e-mail was twofold:

- A. Primarily to save his job; or, in the alternative,
- B. To trigger negotiations with Wayne Hoovestol, President of the company, for a mutually agreeable amount of severance pay in the event that a termination may occur.

In a letter from Kuhn dated 05/27/2010, she states "We think that it is best that this take place IMMEDIATELY." (REAPP 12 Page 35)

Relator had offered in his e-mail to continue in his capacity as he would transition out of LMTL's employ. Relator's meaning and intent in making that offer was that he would be willing to stay on during a transition period in the event that LMTL chose to terminate him. Duplicitous attempts by Kuhn to define Relator's intent as a resignation were spurious, specious, presumptuous, and immaterial.

Relator further argues that his qualifying language indicating that "if they would be comfortable with a decision to sever immediately" afforded the company an

opportunity to make the choice and that LMTL responded by choosing to terminate him and then capriciously declaring that the termination had been a resignation.

Relator argues that the offers in his e-mail provided LMTL a perfect, custom made vehicle to convert a termination into a resignation by fiat, to spitefully exact a pound of flesh from Relator, and that Kuhn and LMTL took advantage of the opportunity.

Relator argues further that the following statement in his e-mail could hardly be construed as being indicative of an intent to resign unless it were to be taken out of context and then distorted in order to help in rationalizing a mistaken predetermination :

“... there have been several matters in recent weeks between you and me that make continuing on extremely unpleasant”.

Relator’s willingness to “continue on”, albeit under unpleasant conditions, would be markedly different than “quitting” or resigning.

The severance, in the final analysis, was clearly LMTL’s choice and decision, not Relator’s.

Relator argues that Kuhn seized a golden opportunity here not only to avoid an unemployment compensation claim, but also to vindictively damage Relator, in retaliation for his earlier refusal to have anything to do with her, by hopefully rendering him ineligible to receive unemployment compensation benefits in the event that the severance may have subsequently been deemed to have been a resignation. She acted upon the opportunity despite knowing full well that Relator was anxious and eager to stay on, by making a fanciful and deliberately fallacious declaration that Relator had “quit”.

When Kuhn phoned Relator on May 27, 2010, the day after he had sent his e-mail to Smith, the first words out of her mouth were “We accept your resignation”.

Relator firmly and instantaneously advised Kuhn that there was no resignation in play and that he had grown tired of her habit pattern of twisting and distorting words, clauses, and phrases and misinterpreting messages to suit her nefarious purposes.

A typical example of that behavior was Kuhn’s claim that Relator “changed his story”. (REAPP 21- Page 15 - RETR 2 - Page 24 of transcript)

The fact is that Relator NEVER “changed his story” one iota. Never, at any time, did he indicate any intent to “quit” or resign and Kuhn was well aware of that fact. His eagerness and earnest desire to save his job and to remain in the company’s employ was ALWAYS steadfast, absolute, consistent, and paramount in his mind.

As the record shows, to make certain that it was unquestionable and abundantly clear, Relator followed his verbal denial of a “quit” on the telephone in response to Kuhn’s “acceptance” of his “resignation”, with two e-mails repeating the denial, dated May 27, 2010, (REAPP 13 Page 36) and May 28, 2010. (REAPP 14 Page 37)

Beyond those missives, Relator’s attorney, John Dorgan, sent another letter to the company’s counsel dated June 25, 2010, (REAPP 15 Page 38) categorically denying a resignation in any way, shape, or form.

Relator is at a loss as to what more he could have done to confirm that he hadn’t “quit” or resigned and argues that the ULJs involved erred in finding the evidence that Relator had not “quit” but that he had been terminated as lacking in credibility and in

discrediting that evidence in the record in arriving at their decisions.

Given the preponderance of evidence, the ULJs erred in either overlooking it or choosing to ignore and disregard it, and in consequently finding (and/or affirming) that the e-mail itself somehow constituted a resignation and was deemed “credible” evidence combined with Kuhn’s tiresome, unsubstantiated assertion that “Jack quit”. Relator argues that those errors influenced the ULJs toward making and affirming several incorrect Findings and Decisions.

Relator further argues that in composing the e-mail, he intentionally avoided using the words “quit”, or “resign”, or “resignation” as he carefully chose his words.

He contends that, given a respectable command of the English language, it would be reasonable to assume that had he harbored the slightest intent to resign, he would have expressed it in no uncertain terms so as to remove any possible doubt.

The record reflects that it was a combination of the withdrawal of his supervisors’ support coupled with Relator’s cognizance of “trumped up”, bogus, manufactured allegations that were being leveled against him, and his resulting expectation and suspicion that a termination was in the offing, that gave rise to his decision to compose and to send the e-mail.

As the record shows, on January 21, 2010, Kuhn called Relator over to her office in Eagan, MN, for a “visit”. The “visit” turned out be an inquisition and a scathing excoriation of Relator for alleged recent “rudeness” and “disrespect” on his part toward both “customers” (lessees/debtors) and fellow employees.

In point of fact, there had been no change in Relator's behaviors, management of his accounts or in his relations with fellow employees. Kuhn's charges of some sort of recent change in Relator's conduct were fabricated in order to lay groundwork for an upcoming, planned termination and the charges were unfounded, manufactured, distorted, malicious, mistaken characterizations of Relator's deportment.

Relator argues that Kuhn's testimony in the hearing, aside from that having to do with the "visit" which she had with Relator, and the one phone conversation with Relator wherein she "accepted" his "resignation", should either be expunged as hearsay or disregarded since she never, on even one occasion, visited him at his work station and consequently, never had the slightest idea as to his job function and/or what it entailed.

Several illustrations of her ignorance regarding Relator's regimen follow:

1. Her suggestion that Realtor worked about fifteen (15) hours a week when he was actually working fifty (50) hours - plus - weekly; and,
2. Her "admonishing" Relator to treat all of the firm's "customers" in the same manner, lumping them all together, totally failing to recognize that the "customers" were also lessees/debtors and that roughly 15% of them were delinquent slow payers and that, as an account manager, it was Relator's responsibility to prod those "customers" toward coming current with the firm. The fact that managing that 15% of his accounts required entirely different handling than the other 85% simply never registered with Kuhn.
3. Her "instructions" that Relator was not allowed or "privileged" to EVER exercise any JUDGMENT - he was to function as an unimaginative zombie. She was

never able to connect the dots between RESULTS and PERFORMANCE on the one hand and Relator routinely and necessarily exercising JUDGMENT dozens of times daily in making arrangements (aka “cutting deals”) with lessees to bring delinquencies current on the other.

Kuhn appeared to be of the impression that Relator’s superior effectiveness in the performance of his duties was due to happenstance or osmosis rather than to his unusual abilities and efforts. She totally failed to understand that Relator exercised his JUDGMENT in each and every contact with delinquent lessees and that was the precise reason for his record of outstanding performance.

4. Her self contradictory testimony in the hearing wherein she first testified that “... he actually worked from his home as he wanted...” (REAPP 22 Page 18 - RETR 3 - Page 28 in transcript) (she was correct in that assertion). However, a few moments earlier, she testified that Relator had quit and recited a litany of reasons for his having “quit” (REAPP 23 Page 18 - RETR 4 - Pages 24,25,26,27,& 28 in transcript). The two pieces of testimony are dichotomous; i.e., if Relator was working from his home as he wanted (and he was), what sense would it have made for him to quit or want to quit? The two allegations don’t wash but are indicative of Kuhn’s proclivity to ramble in a disjointed and incongruous manner, irrationally articulating whatever may come to mind if it happens to fit into some particular venomous fantasy that she has conjured up at the time.

Relator argues that if anyone was rude and disrespectful here, it was Kuhn toward

Relator, resulting largely from a self appointed, unfounded, and inflated notion of her importance to the operation of the firms that employed her.

5. Her failure to realize and/or acknowledge that a favorite ploy of delinquent debtors, when not liking what they're hearing from an account manager, is and was to do an "end run" by calling into headquarters, hoping to find someone in a supervisory capacity who may countermand the account manager's demands.

Relator argues that there was no change in such calls, either toward the end of his employment or at any other time over the 5 3/4 years he was employed by the firm other than that which the consistently increasing number of leases outstanding may have triggered and that LMTL's claim that there was a sudden "rush" of such calls toward the end of his employment was another fabrication to paint a picture of some sort of profound change in Relator's behaviors during the last few months of his employment.

6. Her recalcitrance in refusing to take into consideration Relator's job performance and his results. Instead, Kuhn, apparently having been unaware of Relator's mentoring of Lucht, unknowingly complained in the hearing about Relator's comment that he had taught Lucht what little he did know about collection procedures (REAPP 24 - Page 19 - RETR 5 - Page 28 in transcript), seemingly oblivious to the fact that the statement was 100% accurate.

7. Her testimony in the hearing that "... he felt he could do better than us" (REAPP 25 - Page 19 - RETR 6 - Page 31 in the transcript) for two reasons:

A. Including herself in "us" since she was simply an HR Director and had no

knowledge of or familiarity with Relator's job or what it entailed; and,

B. For her failure to recognize, realize, take into consideration, and/or acknowledge that both she and Lucht, while both had recently been given considerable power, authority, and control, were relatively new employees and both were basically unfamiliar with Relator's job and what the job entailed. Consequently, they both failed to simply take advantage of Relator's experience, expertise, and 5 ¾ years of dedication, tenure, and "Swiss watch" effectiveness as he and his efforts continued to contribute significantly to the successes of the companies that employed him.

Shortly before the severance, Relator and Smith were the two account managers monitoring approximately 300 accounts each. A review of the comparative performances (comparing apples with apples), indicated Relator had roughly \$14,000 in delinquencies outstanding and Smith had roughly \$250,000.

So it wasn't a matter of Relator "feeling" that he could do better than "us" (them) (REAPP 25 - Page 20 - RETR 6 - Page 31 in transcript)) - the results were in and chronicled and they PROVED irrefutably that he could do (and had done) better than "us" (them). Those numbers were disregarded and Smith was promoted to Collections Manager while support for Relator was withdrawn and the progress in the scheme to "get rid" of him became obvious as the handwriting continued to appear on the wall.

Relator argues that these contentions are RELEVANT and that they are NOT NEW in that they are responsive to numerous false, pejorative allegations toward Relator made by LMTL witnesses during the hearing.

Further, Relator argues that each time he tried to testify with respect to these matters during the teleconference hearing, expecting some assistance from the ULJ conducting the hearing, he was instead interrupted or admonished or chastised by her. Since it became obvious to Relator that the ULJ had predetermined her Findings and Decision in the matter, Relator was intimidated from proffering this substantial relevant testimony, for fear of risking throwing gasoline on the fire and further alienating the ULJ, who had clearly predetermined her Findings and Decision in the matter before the hearing ever began.

As the record reflects, Lucht crafted a set of new “policy guidelines” (REAPP 16 Pages 39 and 40) with which Relator was henceforth asked to fully comply. Relator was forced to sign the document (or else!!), indicating agreement to comply completely with it. The document contains provisions that simply made complete and absolute compliance with it impossible if Relator were also still to be expected to discharge his daily duties and responsibilities. Lucht knew (or should have known) that 100% compliance with a variety of nonsensical demands and requirements set out in the instrument would be impossible to meet so more groundwork was suddenly in place to terminate Relator for future “failure to comply” with the provisions in the “new company policy”.

On at least three occasions, Kuhn falsely claimed that Relator had expressed a desire to leave LMTL’s employ. The first such occasion was in her letter to Relator dated 05/27/2010, wherein she stated “Given your desire to leave the company...” (REAPP 12 Page 35)

The second instance was an even more flagrant untruth as she testified under oath in the hearing that "... he also made it pretty clear that he is going to be seeking other employment" (REAPP 26 Page 22 - RETR 7 - Page 24 in transcript)

The third occasion was in her 05/27/2010, letter wherein she again stated "... make it clear that you do intend to pursue a transition..." (REAPP 12 Page 35)

None of those utterances was truthful and Relator argues that they were all designed to deliberately and deceptively attempt to "grease the skids" by lending credibility to the company's contrived, concocted hope and expectation that Relator would be enticed into "quitting" or resigning, rather than being terminated, since he was "so desirous" of leaving.

In any event, at the conclusion of the "visit", Kuhn indicated satisfaction with Relator's compliance and behaviors and, upon Relator's request for a letter so stating, in black and white, Kuhn promised that she would send him a letter to that effect.

Two weeks later, when Relator asked about the letter, Kuhn told him that she had been advised to NOT send the letter, that she had changed her mind, so not to expect it.

Instead, on February 23, 2010, Kuhn sent Relator a threatening letter stating "Jack this will be your final warning" along with notice that he would be TERMINATED (REAPP 17 Page 41) if the behaviors that had earlier been ALLEGED should continue.

Relator was dumbstruck since the tone and content of the letter were in direct conflict with Kuhn's verbal acknowledgment of satisfaction and harmony at the end of the "visit" just two weeks earlier.

Within that two week window, Smith , who had by that time been promoted to Relator's manager, made two comments:

- A. "Jack is doing an awesome job"; and
- B. "Nobody should have to work under that kind of pressure".

The disparity between Smith's comments and the tone and commentary in Kuhn's letter is curious, to say the least.

So Relator argues that the ULJs involved erred by "buying into" the company's contention that the e-mail had constituted a resignation, failing to recognize that the severance was a termination, and that the termination, which was to later be declared a resignation by Kuhn, was the final salvo in a devious scheme that had earlier been planned and orchestrated to "get rid" of Relator.

Further, Relator argues additional error by the fellow DEED ULJ who was assigned to review the earlier DEED ULJ's Findings and Decision. As an appellant applicant, Relator realized in retrospect that his "opportunity" to request a reconsideration presented him with nothing more than an upcoming waste of his time and effort and a classic exercise in futility.

He is troubled, disturbed, and perplexed about applicants' ability generally to receive a fair, objective, unbiased reconsideration of a DEED ULJ's Decision and Order. It matters not whether the reconsideration is by the same Jurist (as is normally the case) in hopes that she/he may admit to her/his earlier mistake and reverse herself/himself, or whether the reconsideration may be conducted by a fellow DEED ULJ, when both are employees

of the same State of Minnesota Department, communicate with each other and work together daily, cozily joined at the hip, when it is “comfortable” and/or when the occasion is perceived to call for it, and finally, that their work products and their contents are overseen, supervised, and approved by the same Departmental Chief Judge.

Relator understands that any one ULJ can make a mistake, may be inept, biased, or careless, or may just have a bad day. However, for a second ULJ to affirm an egregiously erroneous Decision, and for a third ULJ to bless such an affirmation by allowing it to be published over his name is shameless, disgraceful, abusive Judicial mischief.

Relator argues that such a chain of events took place in this case and that it occurred purely in order to make sure that everybody within the Department was on the same page. Rather than admit to and reverse the errors perpetrated by two ULJs early in the proceedings, subsequent rulings were handed down to affirm those errors to cover up the first two ULJs’ mistaken Findings and Decision and came to fruition as DEED’s final marching orders.

Despite the applicable law herein, a preponderance of the evidence, and a ration of basic common sense that had been overlooked, discredited, or ignored by the earlier DEED ULJs, the replacement DEED ULJ essentially simply “rubber stamped” her fellow Departmental Jurist’s Findings and Decision and the third DEED ULJ then lent his name to the charade.

II. Relator also argues that the ULJs erred in their presumption that the inordinate

delay in the filing of an appeal to Relator's Eligibility Determination was due to a mistake by DEED rather than by LMTL and therefore erred further in their assumption and exercise of jurisdiction in the matter predicated upon that presumption.

There is not one scintilla of evidence in the record that DEED made the mistake. That determination was predicated upon a totally baseless and incorrect presumption on the part of the ULJs involved.

Instead, the entirety of the evidence relative to this issue indisputably confirms that if LMTL's claimed non-receipt of the mailing was truthful, it would have been due to its own failure (admitted TWICE by Kuhn) (REAPP 6 Page 15) & (REAPP 18 Page 42) to fully and procedurally properly fill out DEED's change of address form, in order to change its LAST KNOWN ADDRESS in DEED's data base from Las Vegas to Iowa.

The second and third ULJ both erred in stating in their "Other Notes" accompanying the final Order (REAPP 3 Page 10) "The record shows that LMTL PROPERLY updated its address in 2008 and the Department failed to mail the separation determination to LMTL's last known address".

1.) The note demonstrates carelessness on the part of the ULJs involved toward particulars in this case in that the document was a Determination of Eligibility, not a "separation determination".

2.) More importantly, the record reflects exactly the opposite of the contention in the ULJs' aforementioned note. The record substantiates that LMTL failed to PROPERLY and completely execute the change of address form and Kuhn verified that

impropriety, as the record shows, on TWO occasions (REAPP 8 Page 19 and REAPP 18 Page 42).

The IMPROPER execution of the forms by LMTL, admitted TWICE by Kuhn in the record, was the reason why DEED had the Las Vegas address as the LAST KNOWN ADDRESS for the company in its data base at the time of the mailing and consequently addressed the mailing to Las Vegas. The “proper update” as described and cited incorrectly in the “Other Notes” accompanying the final Order could not have been any more IMPROPER.

Hence, Relator argues that if LMTL was never made aware of his eligibility to receive unemployment compensation benefits for approximately six (6) months due to its non-receipt of the mailing, it was LMTL’s fault, not DEED’s. Ironically, it was LMTL’s unsuccessful attempt(s?) to effect a change of address in DEED’s data base in 2008, admitted twice by Kuhn in the record, that resulted in the Las Vegas address being the last known address for the company in DEED’s data base at the time of the ill fated mailing. In turn, it was that IMPROPER, inadequate, and incomplete effort to execute the change of address form by LMTL that caused DEED to address the mailing to the stale Las Vegas address.

It wasn’t DEED’s fault and it certainly wasn’t Relator’s fault. The proximate fault for the mistake rested 100% with LMTL, as Kuhn openly admitted TWICE in the record. There simply can be no logical reason or explanation for Kuhn’s two admissions of having IMPROPERLY executed DEED’s forms if, in fact, LMTL had PROPERLY executed

them.

Relator further argues that the ULJs involved all failed to detect which entity was at fault for the mistake by overlooking or choosing to ignore and/or to disregard Kuhn's two admissions in the record , and then proceeding to mistakenly determine that DEED had been at fault rather than LMTL.

So Relator argues that the ULJs all erred in granting (or in affirming) the company an extension to object to and to appeal Relator's Determination of Eligibility to receive unemployment compensation benefits and that an appropriate correction herein to the mistaken assertion in the "Other Notes" of the final Order is adequate reason in and of itself to reverse the final Decision in this case.

Kuhn claims that the company did not receive the mailing. Relator argues that if that claim were true, it raises a significant and relevant question as to EXACTLY how LMTL did become aware of the Eligibility Determination approximately six (6) months after the ill fated mailing was returned and/or what caused such a lengthy delay for the "discovery".

Had LMTL PROPERLY executed the change of address form(s?), as the third ULJ claimed that it had in his Other Notes accompanying his Decision and Order (REAPP 3 Page 10) there would have been no reason or plausible explanation for Kuhn's two admissions (REAPP 6 Page 15 & REAPP 18 Page 42) of the company's failure to do so.

Those two documents in the record indicate that Kuhn had some unmentioned

contact with a DEED employee long after LMTL's time to file an appeal had expired, was advised that the company's '08 effort to file a change of address had been inadequate and IMPROPER and that the mailing had been returned as undeliverable, thereby proving that DEED had the Las Vegas address in its data base as the LAST KNOWN ADDRESS for LMTL at the time of the mailing. Hence, LMTL was ultimately responsible for the mailing having been addressed to the Las Vegas address, not DEED.

That contact resulted in Kuhn's two unequivocal admissions in the record and later, to LMTL's decision to appeal Relator's Determination of Eligibility approximately five (5) months beyond its deadline to do so.

On January 14, 2011, a ULJ dismissed LMTL's appeal because it was "untimely".

On January 20, 2011, LMTL filed a Request for Reconsideration of the Dismissal (REAPP 9 Pages 20 & 21)) and on February 24, 2011, the ULJ erred by reversing himself, ordering his earlier Findings and Decision to be Set Aside, and then ordering an additional hearing. (REAPP 10 Pages 22 through 27)

In his memorandum, he prefaced his remarks with "Due to Department error..." (REAPP 9 Page 20)

He erred therein by making the presumption that DEED had, in fact, been at fault for the mistake, either completely overlooking or ignoring and disregarding the aforementioned two admissions of fault by LMTL, and by then proceeding to issue his new Order based upon that mistaken presumption.

Another ULJ then erred in acting upon the same unfounded and mistaken presumption by granting LMTL a five (5) month extension, waiving DEED's 30 day rule, and scheduling and subsequently conducting an evidentiary hearing on 03/14/2011 that never should have taken place.

She then erred in proceeding to find Relator ineligible for unemployment compensation benefits, ordering Relator to reimburse DEED \$10,179 in benefits he had already received, and in finding him ineligible to receive any future benefits (REAPP 10 Pages 22 through 27) , all based upon a misinterpretation of law, rejection of a preponderance of evidence, and failure to consider the element of common sense involved.

Relator further argues that the three ULJs all erred in assuming and exercising jurisdiction in the case since LMTL, having twice admitted fault for the mistake, was never entitled to a waiver or to an extension. In light of the two admissions, LMTL's time to appeal had long since expired and the ULJs erred in their determinations that the company's time to appeal hadn't begun to run because of an error by DEED whereas if any such error, in fact, did occur, it would have been LMTL's fault by the company's own two admissions, both of which are in the record.

Relator argues further that, regardless of which entity was at fault, DEED mailed the Notice to THE LAST KNOWN ADDRESS that it had in its data base for LMTL at the time of the mailing. Hence, THE LAST KNOWN ADDRESS threshold was met.

The ULJ who dismissed and then reversed himself was correct in his reasons for

dismissal in the first place. Several of his reasons for the Dismissal follow:

1. “On Tuesday, July 13, 2010, the Unemployment Insurance Program mailed to Employer AT THE ADDRESS ON FILE ... a Determination of Eligibility”; and,

2. “The Minnesota Supreme Court had held that the statutory time period is ABSOLUTE, REGARDLESS OF ANY ASSERTED MITIGATING CIRCUMSTANCES”; and,

3. “The ULJ has no legal authority to hear and consider the appeal, the Determination of Eligibility having become **final** by LAW” (REAPP 7 Page 17)

Relator contends that the Judicial errors on the part of the ULJs herein were based upon PRECISELY the sort of “asserted mitigating circumstances” referenced in the MN Supreme Court’s opinion.

So Relator argues that his substantial rights were prejudiced because:

1. The ULJs’ decisions and affirmations were in excess of the statutory authority or jurisdiction of the Department; and,

2. The findings, inferences, conclusion, and decisions were made upon unlawful procedure; and,

3. They were unsupported by substantial evidence in view of the entire record as submitted; and,

4. They were arbitrary and capricious (268.105, 2010 Minnesota Statutes Subd. 7 (d) 2,3,5, and 6) (REAPP 19 Pages 43 & 44)

III. In his final Order dated April 29, 2011, the ULJ erred in his Reasons for Decision

in stating "... a preponderance of the evidence shows that Stassen quit because Smith transferred the account and because he believed Smith did not adequately support him. While Stassen may have been personally upset with Smith, these conditions would not compel an average, reasonable employee to quit and become unemployed."

(REAPP 3 Page 7)

That reasoning indicates a lack of understanding on the part of the ULJ in that absent Smith's support, not to mention Smith actually sabotaging collection efforts in which Relator was engaged with numerous delinquent lessees, Relator's job function was rendered IMPOSSIBLE to perform.

So, while Smith's efforts to undermine Relator in the performance of his responsibilities did not "compel" Relator to "quit and become unemployed", they were enough to compel him to draft and to send the e-mail at issue in hopes that the withdrawn support would be restored and the sabotaging activity would cease.

IV. The ULJs erred in their decisions and affirmations with respect to the ULJ who conducted the hearing failing to assist Relator during the hearing.

VI. CONCLUSION

Wherefore, Relator prays for Reversal of the Lower Courts' Decisions and an Order reinstating and restoring his eligibility to receive all unemployment compensation benefits rightfully due him, both retroactive and future.

July 25, 2011

A handwritten signature in cursive script that reads "John Stassen". The signature is written in black ink and is positioned above a solid horizontal line.

John Stassen
Relator