

Informal Brief

A12-2194

Diederick van de Werken – Relator

- 1) Bell and Howell – Respondent
- 2) Department of Employment and Economic Development - Respondent

Table of Contents:

A. Copy of petition for writ of certiorari	Insert 1
B. Timeline and Events Overview	Pages 1 -3
C. Appeal Consideration Argument	Page 4
D. Appendix with Exhibits 1-8	Pages 5-25

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Diederick van de Werken,
Relator (your name)

**PETITION FOR WRIT OF
CERTIORARI**

vs.

COURT OF APPEALS #:

1) Bell and Howell,
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #:

2) Department of Employment & Economic
Development,
Respondent

DATE OF DECISION: November 20, 2012

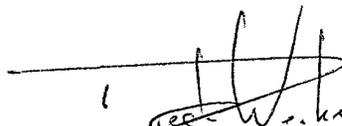
TO: The Court of Appeals of the State of Minnesota:

Diederick van de Werken (your name) hereby petitions the Court of Appeals for a Writ of Certiorari pursuant to Minn. Stat. § 268.105, subd. 7, to review a decision of the unemployment law judge issued on the date noted above, upon the grounds that _____

_____ The ruling by the Judge which concludes there has been an overpayment is based on an erroneous calculation and incorrect interpretation of the facts. (1) The overpayment is applied to a period during which time no payment was received by Relator. (2) The conclusion also assumes that the Relator received severance money during the 8 week severance period following the conclusion of an agreement that was only executed between the Relator and Respondent in late August 2012 when in fact the Relator did not claim unemployment benefits, nor was he paid for them, during that 8 week severance period starting in late August 2012. This is not taken into consideration. _____

(Summarize why you are appealing. You will make a detailed argument in your brief that you will be filing later.)

DATED: 12 | 01 | 2012


(Signature of you or your attorney)

Diederick van de Werken
(Print your name)

3 Dogwood Lane
(Address)
North Oaks, MN 55127

(651) 481 8419
(Telephone number)

BRIEF:

Timeline and Events Overview:

05/21/2012: I was terminated by my Employer, Bell and Howell, on May 21, 2012. At the time of my termination my employer presented me with an Agreement for my review which, among other things, outlined severance pay. Upon my review, the proposed Agreement was deemed not acceptable to me because, among several things: (1) the proposed severance was inadequate, (2) it required me to give up certain rights.

05/22/2012: I filed for Minnesota Unemployment Benefits on May 22, 2012 and proceeded to comply with all of the requirements to receive unemployment benefits. At first, I did not receive unemployment benefits and was deemed ineligible because of the presumption that I was collecting severance pay from my employer during the 6 week period following my termination. In fact, I was not receiving severance pay from my employer at that time and no Agreement existed at the time. Furthermore, it was evident from the negotiations that took place between me and my employer that the possibility existed that we would not be able to arrive at an Agreement because of disagreements regarding the terms of the agreement.

05/30/2012. On May 30th I proceeded to contact my employer to request reinstatement into my position which they declined in a letter dated June 12, 2012.

06/14/2012. Based on my Employer's letter of June 12, I provided them with a settlement proposal that I deemed more appropriate than the one they provided to me on my termination date of 05/21/2011. Between 06/14 and 08/20 my employer and I negotiated which finally resulted in a mutually acceptable settlement proposal.

07/2/2012: On July 2, 2012 I filed an Appeal to appeal the Deductible income determination. Judge Scott Mismash presided over the hearing on July 20th.

07/23/2012: On July 23, 2012 I received a Notice Of Decision Of The Unemployment Law Judge which stated that I did not receive deductible separation payments and as such I was eligible for benefits beginning May 20, 2012 and continuing until conditions change. (See also Exhibit 1, page 1-5)

08/22/2012: On August 22, 2012 my former Employer, Bell and Howell, and I came to an acceptable Agreement which included severance pay. By way of an Amendment signed by my Employer and dated August 29, 2012 the Agreement was executed. (Exhibit 7, page 1) The severance provision in the Agreement indicated that I was eligible to receive a total of eight (8) weeks of severance pay at the Annual Benefits Base rate (ABBR). On August 22nd my Employer provided me with a payment schedule for the severance pay. First payment would take place on September 6th and subsequent payments would be made on September 20th, October 4th, and October 18th. (Exhibit 8, page 1) Each payment would cover a two week period, being the period prior to the payment dates. Subsequent to executing the Agreement with my Employer I informed the State of Minnesota Unemployment Benefits regarding this change and I faxed in a copy of the Separation Agreement and indicated Severance was for 8 weeks with payments starting on the above mentioned pay dates. (See also Exhibit 2, page 1-3)

9/24/2012: On 9/24/2012 I received a determination of ineligibility because unemployment benefits were delayed by the total amounts of payments received by the employer (the 8 weeks severance). However, the tabulation of the value of the unemployment benefits was incorrect and I filed an Appeal to have this addressed on 9/28/2012. A hearing took place on 10/12, 2012 with Judge Schepers.

10/15/2012 On 10/15/2012 I received a notice from Judge Schepers that he rendered a decision from my Appeal. Judge Schepers concluded my severance pay was for 8 weeks and the question about total amount of severance/payments was resolved. However, the judge applied the severance pay to the period from May 20, 2012 to July 12, 2012. Subsequent to applying the severance pay to the period of May 20 to July 12, the Judge concluded that there was an overpayment of \$4,776 in unemployment benefits. (See also Exhibit 3, pages 1-4)

10/18/2012 On 10/18/2012 I filed a reconsideration request for Judge Schepers' decision of 10/15/2012 citing that he applied severance pay for the period of May 20 to July 12 which is a period during which time I did not actually collect Severance pay from my Employer. I only collected Severance pay from my Employer on September 6, September 20th, October 4th, and October 18th during which time I did not request OR receive unemployment benefits. (See also Exhibit 4, pages 1-2)

11/20/2012: On 11/20/2012 Judge Schepers issued an Order of Affirmation of his findings of October 15, 2012. Furthermore, in the Memorandum accompanying the Affirmation the Judge indicates that I should have known that I would be receiving severance pay and that delay was caused by me. (See also Exhibit 5, page 1-4)

Appeal Consideration Argument:

I was unemployed for 20 weeks, received severance for 8 weeks and should therefore be eligible to receive unemployment benefits during the remaining eligible weeks. It would only be appropriate to require reimbursement for an overpayment for the period of May 20 – July 12 if I would actually have received severance pay during this period when in fact I did not. Furthermore, the decision also does not take into account that I did not collect unemployment benefits during the period that I did receive severance payments, approximately three months after my termination. Once the Judge applied severance payment to the period of May 20 – July 12, then unemployment benefits should have been paid out during the period that I actually did receive the severance pay (but to which period it was not applied) and during which time I did not apply for benefits or receive them. It was incorrect to require repayment of severance payments in the amount of \$4,776 because I did not receive unemployment benefits during the period of actual receipt of severance which is the period 8/19/2012 through 10/07/2012. I believe the simplest way to resolve the dispute is to consider that Judge Mismash previously ruled that I did not receive severance pay during the period immediately following my termination and that I was subsequently eligible for unemployment benefits. Once severance pay is applied to the period that I actually received severance then the record will show that I do not owe \$4,776 in overpayment of benefits. (See also Exhibit 6, page 1)

For the record, I also dispute a comment in the Memorandum from Judge Schepers of his Order of Affirmation dated 11/20/2012. I dispute the comment that, I should have known that I would be receiving severance pay and that delay was caused by me. This is not an accurate statement because (1) my employer requested I sign an Agreement that was not acceptable to me and this required negotiation to arrive at an Agreement acceptable to both parties, (2) both parties negotiated and this took a lot of time, but the great majority of any delays were on account of my employer and (3) there was always a very real possibility that the parties would not be able to come to an Agreement and that subsequently there would be no Severance Pay, as outlined in the details of the Agreement itself.