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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0372**

Gregory S. Crow  
Relator,

vs.

Department of Employment and Economic Development,  
Respondent.

**Filed May 6, 2008  
Affirmed  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 14957 06

Gregory S. Crow, 5222 Grandview Lane, Edina, MN 55436-2114 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, 1st National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Johnson,  
Judge.

**UNPUBLISHED OPINION**

**LANSING, Judge**

By writ of certiorari, Gregory Crow appeals an unemployment law judge's determination that Crow's weekly benefit amount under the unemployment-insurance

statute is \$273. Crow maintains that he is entitled to additional wage credits because his employer underpaid him for the hours that he worked in the second quarter of 2005. Because the unemployment benefits were properly based only on wages actually paid, we affirm.

## F A C T S

Gregory Crow obtained unemployment benefits in August 2006. Because the account became effective in August 2006, the “base period” for the account was April 1, 2005 to March 31, 2006. *See* Minn. Stat. § 268.035, subd. 4 (2006) (explaining method for determining base periods). The Department of Employment and Economic Development (DEED) informed Crow that, based on his earnings during the base period, he was entitled to a weekly benefit of \$273.

DEED calculated Crow’s weekly benefits from information retained in its records. DEED’s records showed that Crow had two base-period employers, Questar Educational Systems, Inc. and Triangle Services, Inc. Questar paid Crow wages of \$5,140.13 in the second quarter of 2005 and \$435 in the third quarter of 2005. Triangle paid Crow wages of \$1,978.67 in the second quarter of 2005; \$5,430.52 in the third quarter of 2005; \$3,620.82 in the fourth quarter of 2005; and \$4,802.59 in the first quarter of 2006.

DEED therefore determined that Crow’s highest earning quarter was the second quarter of 2005 in which Crow earned a total of \$7,118.80 wage credits and an average weekly wage of \$547.60. *See* Minn. Stat. § 268.07, subd. 2(b) (2006) (stating that “applicant’s average weekly wage . . . [is] computed by dividing the high quarter wage credits by 13”); Minn. Stat. § 268.035, subd. 27 (2006) (defining “wage credits” as “the

amount of wages paid within an applicant's base period for covered employment"). Consequently, Crow was entitled to a weekly benefit of fifty percent of \$547.60 or \$273. *See* Minn. Stat. § 268.07, subd. 2(b)(2) (stating that weekly benefit amount may be determined by calculating "50 percent of the applicant's average weekly wage during the high quarter"), (c) (stating that "applicant's weekly unemployment benefit amount . . . [is] rounded down to the next lower whole dollar").

Crow appealed DEED's calculation of the benefits in September 2006. At an evidentiary hearing, Crow testified that in November 2005, Triangle agreed to pay Crow an hourly wage of \$11.25. Crow therefore asserts that the wage credits DEED used to calculate Crow's weekly benefit are incorrect because they reflect Crow's actual earnings of \$10.50 an hour, rather than the promised \$11.25-an-hour wage. Crow contends that he is therefore entitled to additional wage credits for the second quarter of 2005 and a higher weekly benefit. Crow has also filed a claim against Triangle in conciliation court to recover the back pay that he believes he is owed.

Following the hearing, the unemployment law judge determined that DEED had correctly calculated Crow's weekly benefit amount. Crow filed a request for reconsideration, and an unemployment law judge affirmed the determination that Crow's weekly benefit amount is \$273. Crow now appeals.

## **D E C I S I O N**

An applicant's weekly unemployment benefit is based on the applicant's base period and the number of wage credits earned by the applicant. *See* Minn. Stat. §§ 268.035, subd. 4 (2006) (defining "base period"), .07, subds. 1(b), 2 (2006)

(explaining method for calculating weekly unemployment-benefit amount). The statute defines “wage credits” as the “amount of wages paid within an applicant’s base period.” Minn. Stat. § 268.035, subd. 27 (2006). The statute further defines “wages paid” as “the amount of wages that have been actually paid or that have been credited to or set apart so that payment and disposition is under the control of the employee” and provides that “[b]ack pay shall be considered ‘wages paid’ on the date of actual payment.” Minn. Stat. § 268.035, subd. 30 (2006).

We review an unemployment law judge’s (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ’s decision). In applying the statutory language to the facts of an unemployment claim, we are required to apply the plain language if the statute’s words are clear and free from ambiguity. *See Tuma v. Comm’r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986) (noting that statutes are interpreted according to ordinary meaning when legislature’s intent is plain from statute’s unambiguous language).

Crow does not dispute that DEED correctly determined his base period and applied the correct mathematical formula to calculate his weekly unemployment benefit. Rather, he argues that the ULJ erred because the weekly benefit calculation was based on an erroneous interpretation of “wages paid” under the unemployment-insurance statute.

Crow asserts that he is entitled to greater benefits because his employer underpaid him and owes him an additional 75 cents for each hour he worked.

Although Crow has made a spirited argument for his interpretation of “wages paid,” this argument cannot prevail against the plain language of the statute, which the ULJ properly applied in determining Crow’s wage credits for the second quarter of 2005. Crow does not dispute that the money that he claims he is owed is properly characterized as back pay. *See* Minn. Stat. § 268.035, subd. 3 (2006) (defining back pay as “a retroactive payment of money by an employer to an employee or former employee for lost wages”). Therefore, assuming Triangle Services, Inc. owes Crow the claimed back pay, the statute requires that the “wages paid” as back pay are considered “on the date of actual payment.” Minn. Stat. § 268.035, subd. 30. Consequently, because Triangle did not actually pay Crow the back pay he claims he is owed during his base period, these amounts cannot be reflected in additional wage credits. *See Tuma*, 386 N.W.2d at 706 (observing in analysis of predecessor statute that meaning of “actually paid” is “quite clear”).

Crow emphasizes that the statute defining “wages paid” also states that “[w]age payments delayed beyond the regularly scheduled pay date are considered ‘wages paid’ on the missed pay date.” Minn. Stat. § 268.035, subd. 30. He asserts that, while the provision specifically addressing back pay applies to some types of back pay, the delayed-payment provision also applies to some types of back pay and should be applied to the back pay Triangle owes him. Thus, Crow concludes, the back pay he receives

from Triangle should be considered wages paid on the missed pay date rather than on the date of actual payment.

The plain language of the statute, however, demonstrates that the legislature did not intend to differentiate between categories of back pay: “Back pay shall be considered ‘wages paid’ on the date of actual payment.” Minn. Stat. § 268.035, subd. 30. Furthermore, even if the delayed-payment provision could be read broadly to include back pay, the legislature’s rules of construction dictate that the provision specifically addressing back pay must prevail over the more general provision addressing delayed payments. *See* Minn. Stat. § 645.26, subd. 1 (2006) (stating that “[w]hen a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both”); *In re Welfare of J.M.*, 574 N.W.2d 717, 721 (Minn. 1998) (stating that “[w]hen the court construes a statute that contains both specific and general provisions, canons of statutory construction dictate that the specific provisions prevail over general provisions”). Therefore we must interpret the provision that specifically addresses back pay as applying to all back pay, including the back pay Crow claims he is owed.

Because the statute is clear and free from ambiguity, we decline to reach the arguments addressing legislative intent. *See* Minn. Stat. § 645.16 (2006) (stating that “[w]hen the words of a 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”).

**Affirmed.**