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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2052**

Anthony Berendes,
Relator,

vs.

Target Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 29, 2010
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 22908844-3

Anthony Berendes, Eden Prairie, Minnesota (pro se relator)

Joseph G. Schmitt, Megan J. Backer, Lisa M. Schmid, Nilan Johnson Lewis P.A.,
Minneapolis, Minnesota (for respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
St. Paul, Minnesota (for respondent-department)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he was ineligible for unemployment benefits because he quit his employment without good reason caused by his employer. Relator argues that he was eligible for benefits under a statutory exception that allows for benefits when an employee quit because the employer notified the employee that the employee was going to be laid off because of lack of work within 30 calendar days. Because relator was not notified that his layoff would occur within 30 calendar days, we affirm.

FACTS

Relator Anthony Berendes worked for respondent Target Corporation from May 15, 2006 through May 29, 2009. Target informed Berendes that it was over its head count and that there would be a lack of work.¹ Berendes's supervisor informed him that if he resigned, he would be eligible for rehire; but if he did not resign and was laid off at a future date, he would not be eligible for rehire. Berendes was not provided with a date on which he would be discharged if he chose not to resign. On May 29, 2009, Berendes chose to end his employment even though continued work was available, because he did not want to be discharged and ineligible for rehire.

Berendes applied for unemployment benefits and established an unemployment-benefit account, but he was later determined to be ineligible for unemployment benefits.

¹ There is no finding of fact regarding the date of this communication, but the record indicates that it occurred on May 1, 2009.

This determination resulted in an overpayment of benefits in the amount of \$3,078. Berendes appealed the determination, and a ULJ decided that Berendes was ineligible to receive benefits. Berendes requested reconsideration, and the ULJ affirmed her initial findings of fact and decision. This certiorari appeal follows.

D E C I S I O N

Our review of a ULJ's eligibility determination is governed by Minn. Stat. § 268.105, subd. 7(d) (2008), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Employees who quit employment are ineligible to receive unemployment benefits, except in certain circumstances. Minn. Stat. § 268.095, subd. 1 (Supp. 2009). An exception applies if

the applicant quit because the employer notified the applicant that the applicant was going to be laid off because of lack of work within 30 calendar days. An applicant who quit employment within 30 calendar days of a notified date of layoff because of lack of work is ineligible for unemployment benefits through the end of the week that includes the scheduled date of layoff.

Id., subd. 1(6).

Berendes claims that the ULJ erred by failing to apply this exception, arguing that the exception applies because Target notified him that he would be laid off “immediately” due to a lack of work. But subdivision 1(6) requires notification of a layoff date within 30 calendar days and explicitly references “a notified date of layoff” and “the scheduled date of layoff.” *Id.* In order for the exception in subdivision 1(6) to apply, the employer must notify the employee of a layoff date within 30 calendar days. *See Freeman v. Swift*, 776 N.W.2d 485, 489 (Minn. App. 2009) (“If a statute, construed according to ordinary rules of grammar, is unambiguous, a court may engage in no further statutory construction and must apply its plain meaning.”), *review denied* (Minn. Mar. 16, 2010).

Subdivision 1(6) is distinguishable from subdivision 3(e), which provides that “[n]otification of discharge in the future, including a layoff because of lack of work, is not considered a good reason caused by the employer for quitting.” Minn. Stat. § 268.095, subd. 3(e) (2008). Subdivision 1(6), which allows for benefits if an employee quits based on notification of a layoff “within 30 calendar days,” is an exception to subdivision 3(e), which disallows benefits when an employee quits based on notification of a layoff “in the future.” Failure to give effect to the explicit reference to a layoff date in subdivision 1(6) would impermissibly render subdivision 3(e) ineffectual. *See* Minn. Stat. § 645.16 (2008) (“Every law shall be construed, if possible, to give effect to all its provisions.”).

Here, the ULJ relied on subdivision 3(e), reasoned that “[n]otification of discharge in the future, including a layoff because of lack of work, is not considered a good reason for quitting caused by the employer,” and decided that Berendes was ineligible to receive unemployment benefits because he did not quit for a good reason caused by Target. *See* Minn. Stat. § 268.095, subd. 1(1) (providing that an applicant who quit employment is eligible for unemployment benefits if the applicant quit because of a good reason caused by the employer). While Berendes testified that Target notified him that he would be laid off “immediately,” he also testified that he was not given a date on which the layoff would occur. And the ULJ’s finding that Berendes’s “supervisor did not provide him with a date on which he would be discharged if he chose not to resign” is not challenged on appeal. While it may be tempting to equate notice of an “immediate” layoff with notice of a layoff date “within 30 calendar days,” we must apply the plain meaning of subdivision 1(6) and give effect to subdivision 3(e). Because Target did not notify Berendes of a layoff date, section 268.095, subdivision 1(6), does not apply, and the ULJ did not err by concluding that Berendes was ineligible for unemployment benefits because he quit employment without good reason caused by his employer.

Affirmed.

Dated:

Judge Michelle A. Larkin