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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1022**

Erik Paul Stever,
Relator,

vs.

Ford Motor Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 1, 2008
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 1403 07

Erik Paul Stever, 3674 Highland Avenue, White Bear Lake, MN 55110 (pro se relator)

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respondent Department)

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he received payment on his separation from employment. Because the ULJ did not err in determining that the payment relator received affected his eligibility for unemployment benefits, we affirm.

DECISION

This court may affirm the decision of the unemployment-law judge (ULJ), remand the case for further proceedings, or 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.

Minn. Stat. § 268.105, subd. 7(d) (2006). A determination that a person is ineligible to receive unemployment benefits presents a question of law, which we review de novo. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

In late 2006, relator Erik Paul Stever accepted a buyout package offered by respondent Ford Motor Company based on the projected closing of Ford's St. Paul assembly plant. The buyout package included a one-time, gross payment of \$100,000, with amounts withheld for federal and state taxes, Medicare, and under the Federal

Insurance Compensation Act (FICA). Relator's last day of employment was December 14, 2006, and relator applied for unemployment benefits. In February 2007, the ULJ determined that, based on relator's receipt of the lump-sum payment, he was ineligible for benefits for the remainder of his benefit year.

In order to receive unemployment benefits, a person must meet the statutory requirements for ongoing eligibility for those benefits. Minn. Stat. § 268.069, subd. 1(3) (2006). An applicant is not eligible to receive unemployment benefits during any week for which the applicant receives, or has filed for payment, an amount in excess of the applicant's weekly unemployment benefit amount, if the payment is

severance pay, bonus pay, sick pay, and any other money payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but *only if the money payment is considered wages at the time of payment under section 268.035, subd. 29, or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act* [.]

Minn. Stat. § 268.085, subd. 3(a)(2) (2006) (emphasis added). "Wages" are defined as "all compensation for services, including . . . severance payments." Minn. Stat. § 268.035, subd. 29.

Relator argues that the payment he received under the buyout plan was not "severance, calculable pension or retirement, or necessarily future wage[s]," but rather "an arbitrary sum of sufficient magnitude to encourage employees to leave an uncertain employment future." We disagree. In *Carlson v. Augsburg Coll.*, this court upheld a determination that a settlement agreement providing "severance pay" disqualified an

applicant from receiving unemployment benefits, when the agreement provided for payment at regular intervals through a specified time period. 604 N.W.2d 392, 394-95 (Minn. App. 2000). The court held that it was not clearly erroneous to find that the payment was severance pay, which is defined as “a sum of money usually based on length of employment for which an employee is eligible upon termination.” *Id.* (quotation omitted).

Although *Carlson* was decided under an earlier version of the unemployment-insurance statutes, the current statutory scheme dictates the same result with respect to relator’s separation payment. The record shows that relator became eligible for and was paid a cash sum because of his separation from employment. Even though relator selected a buyout package which included a single, lump-sum payment and was not based on his length of employment, Ford withheld FICA and other taxes from relator’s payment. Therefore, the payment is properly considered wages, and the ULJ correctly determined that because the payment, calculated on a weekly basis, was in excess of relator’s weekly benefit amount through the end of his present benefit year, he was ineligible to receive unemployment benefits for that period.

Relator also asks this court to determine that he was improperly disqualified from receiving unemployment benefits because he had a good reason to quit caused by Ford. *See* Minn. Stat. § 268.095, subd. 1(1) (2006) (an applicant who quit employment is disqualified from receiving unemployment benefits unless the applicant quit because of a good reason caused by the employer). A department adjudicator initially found, in a separate determination, that relator was disqualified from receiving benefits because he

did not have a good reason to quit caused by Ford. At the hearing, the ULJ obtained the parties' permission to consider both the eligibility and the disqualification issues. *See* Minn. R. 3310.2910 (2007) (permitting ULJ to "consolidate for hearing issues involving the same parties"). But the ULJ determined that, because relator's receipt of the lump-sum payment made him ineligible for unemployment benefits through the end of his benefit year, it was not necessary to decide the issue of disqualification, and the determination of disqualification was set aside. Therefore, relator's argument on that issue is not properly before this court.

Affirmed.