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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-45**

Boyd Christenson,
Relator,

vs.

Christenson & Associates Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 8, 2009
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 21199037-3

Boyd W. Christenson, 1922 Fairmount Avenue, St. Paul, MN 55105-1538 (pro se relator)

Christenson & Associates, Inc., 1922 Fairmount Avenue, St. Paul, MN 55105-1538
(respondent)

Lee B. Nelson, Amy R. Lawler, 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 Hudson, Presiding Judge; Lansing, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this certiorari appeal from an unemployment-benefits determination, Boyd Christenson challenges the application of Minnesota Statutes section 268.085, subddivision 9 (2008), which limits the wage credits used to compute his benefits amount. Because the wages were paid to Christenson as an employee of his wholly owned corporation and because the unemployment-law judge properly applied the statute in effect when Christenson filed his application for benefits, we affirm.

FACTS

Boyd Christenson was employed from June 1993 until August 2008 by Christenson & Associates, Inc. (Christenson Inc.), a corporation in which Christenson owns one-hundred percent of the shares. His primary employment responsibility for Christenson Inc. was to promote an Australian convention center to organizations in North America. Christenson exercised his statutory option to maintain unemployment coverage for himself as an employee of Christenson Inc.

When Christenson Inc. lost the Australian convention center account in June 2008, Christenson Inc. was no longer able to continue employing Christenson. Christenson stopped drawing wages from Christenson Inc. in August 2008 and applied for unemployment benefits. The Minnesota Department of Employment and Economic Development, relying on the 2006 version of Minn. Stat. § 268.085, determined that Christenson was only eligible for four weeks of benefits because he was not “permanently separated from the employment.”

The department later amended its determination to comply with a revision to the statute that had been enacted in the 2008 legislative session. *See* 2008 Minn. Laws ch. 300, § 13, at 1132 (amending limitation on benefits that apply to owner-employees). The 2008 statute limits unemployment benefits for owner-employees to five weeks in one benefit year, but creates an exception if the employee earned \$7,500 or more in each of the previous sixteen calendar quarters. Minn. Stat. § 268.085, subd. 9.

Christenson appealed the department's decision, and an unemployment-law judge (ULJ) held two separate hearings at which Christenson testified. The ULJ reviewed the wage reports that Christenson Inc. submitted to the department. The wage history showed that in two of the previous sixteen quarters Christenson's wages were less than \$7,500, the required amount under the 2008 statute, and in another quarter within that same time period, no wages had been reported. The ULJ concluded that the five-week limitation in the 2008 statute applied to Christenson.

Christenson sought reconsideration and offered wage information for the missing quarter and explanations for the two quarters that were less than \$7,500. The ULJ concluded that Christenson had not shown good cause for failing to submit the evidence before the ULJ's decision and that the new information would not change the outcome. For these reasons, the ULJ denied reconsideration and affirmed the decision. Christenson, by writ of certiorari, appeals.

D E C I S I O N

We review an unemployment-benefits 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. Minn. Stat. § 268.105, subd. 7(d) (2008). The determination that an employee is ineligible or disqualified from unemployment benefits is a question of law to which we apply independent judgment. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). We review the ULJ's interpretation of an unemployment-insurance statute de novo. *Bukkuri v. Dep't of Employment & Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007).

The text of Minnesota Statutes section 268.085, subdivision 9 provides that an otherwise eligible employee who owns or controls, either directly or indirectly, a twenty-five-percent or greater interest in the employing entity may collect only five weeks' worth of unemployment benefits in one benefit year. The five-week limitation does not apply if the applicant has "wages paid of \$7,500 or more . . . in each of the [sixteen] calendar quarters prior to the effective date of the benefit account." Minn. Stat. § 268.085, subd. 9. These provisions are applicable to all unemployment-benefit applications filed on or after July 6, 2008. 2008 Minn. Laws ch. 300, § 13, at 1132.

The effective date of Christenson's unemployment-benefits application is August 10, 2008; therefore, the 2008 amendments to section 268.085, which became effective on July 6, 2008, apply to Christenson's benefits. Christenson owned a one-hundred-percent interest in Christenson Inc., the entity that employed him. The sixteen calendar quarters prior to the effective date of his account begin with the third quarter of 2004 and end with the second quarter of 2008. The wage information in the record establishes that in the first quarter of 2007 and second quarter of 2008 Christenson's wages were less than

\$7,500. No wages were reported for the fourth quarter of 2004. The record supports the ULJ's conclusion that Christenson was not paid wages of \$7,500 or more in each of the sixteen calendar quarters that determine his eligibility for more than five weeks of benefits.

Christenson challenges the ULJ's determination on four grounds. We address each of the grounds separately, but conclude that none of the grounds provides a legal basis that would support a different result.

First, Christenson argues that his wages satisfy the quarterly requirement because they average at least \$7,500 over the sixteen consecutive quarters. This same argument was raised and rejected in *Soderquist v. Universal Servs. Telecom Tech, Inc.*, ___ N.W.2d ___, ___, 2009 WL 3735926, at *3 (Minn. App. Nov. 10, 2009). The *Soderquist* analysis emphasizes that the statute's use of the word "each" in referring to wages "in *each* of the [sixteen] calendar quarters" is unambiguous, and does not allow for averaging the total wages over the sixteen quarters. *Id.*

Second, Christenson argues that he would not be subject to the limited duration of benefits under a previous version of the statute, which relied on a "permanently separated" standard. *See* Minn. Stat. § 268.085, subd. 9 (2006) (providing for determination based on whether employee had been "permanently separated" from employment). Before this provision was replaced completely in 2008 with the \$7,500-each-quarter requirement, the standard had been amended in 2007 to apply the benefit limitation if the employee was "temporarily, seasonally, or indefinitely unemployed and not permanently separated from employment." Minn. Stat. § 268.085, subd. 9 (Supp.

2007). We agree that the 2007 version of the statute would have governed if Christenson had applied for benefits in June 2008 when Christenson Inc. lost the convention center account. But Christenson continued his employment with Christenson Inc. until August 2008. The statute unambiguously states that the application date determines whether the 2008 provisions govern. *See* 2008 Minn. Laws ch. 300, § 13 at 1132 (establishing effective date). Because Christenson did not apply for unemployment benefits until August 10, 2008, more than a month after the new statute's effective date of July 6, 2008, the 2008 statute applies.

Third, Christenson argues that it is unfair to deny him benefits because of legislative changes that took place after he had paid into the system for a number of years. The legislature, however, reserves the authority to amend the unemployment statutes, and employees who submit payments during the effective dates of previous statutes do not establish an entitlement to receive benefits under statutory provisions that are no longer in effect. *See* Minn. Stat. § 268.22 (2008) (stating that unemployment statutes create “no vested private right of any kind against amendment or repeal”).

Finally, Christenson argues that the ULJ should have considered additional wage information that Christenson provided in his request for reconsideration. The ULJ concluded that Christenson did not have good cause for failing to provide the additional evidence at the hearing and that, even if it had been submitted, it would not change the outcome. *See* Minn. Stat. § 268.105, subd. 2(c)(1) (2008) (defining when additional evidentiary hearing should be held). These conclusions are supported by the record. The ULJ carefully questioned Christenson about his wage history at a continued evidentiary

hearing convened specifically for that purpose. Christenson had an opportunity to provide further information or explanations at that time. And even if it had been considered, the additional information would not change the fact that Christenson's income in two of the sixteen quarters was insufficient to satisfy the statute. It was not an abuse of discretion for the ULJ to affirm the decision without an additional hearing.

Affirmed.