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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2071**

Allan Reak,
Relator,

vs.

Allan Reak Excavating, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 29, 2011
Affirmed
Willis, Judge***

Department of Employment and Economic Development
File No. 24226443

Allan John Reak, New Prague, Minnesota (pro se relator)

Allan Reak Excavating, Inc. (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and
Willis, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WILLIS, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) determining that relator was ineligible to receive unemployment benefits because he was a business owner within the meaning of Minn. Stat. § 268.085, subd. 9 (2008). Because the ULJ properly applied the law to conclude that relator was ineligible, we affirm.

FACTS

Relator Allan Reak was the sole owner of Allan Reak Excavating, Inc. from 1996 to September 2008. In September 2008, he dissolved the business and sold the company's equipment. Reak initially applied for and qualified to receive unemployment benefits, but on January 4, 2010, the Department of Employment and Economic Development determined that Reak was ineligible to receive more than five weeks of benefits because he was a business owner within the meaning of Minn. Stat. § 268.085, subd. 9.

Reak appealed, and following three telephone hearings, the ULJ ruled that Reak was eligible to receive only five weeks of benefits because he owned an interest of 25% or more in Allan Reak Excavating, Inc. and did not have wages of \$7,500 in each of the 16 calendar quarters before establishing a benefit account. Reak requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

On review of a ULJ's decision in an unemployment-compensation proceeding, this court may reverse, remand, or modify if, among other reasons, the ULJ's decision is

unsupported by substantial evidence in view of the entire record or is affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2010). This court reviews the ULJ's findings in the light most favorable to the decision and will not disturb those findings if there is evidence that reasonably tends to support them. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The question of whether a statute precludes an applicant's request for unemployment benefits is a question of law, subject to de novo review. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

The right of a business owner to receive unemployment benefits is governed by Minn. Stat. § 268.085, subd. 9, which provides:

Wage credits from an employer may not be used for unemployment benefits purposes by any applicant who:

(1) *individually*, jointly, or in combination with the applicant's spouse, parent, or child *owns or controls directly or indirectly 25 percent or more interest in the employer*[.]

...

This subdivision is effective when the applicant has been paid five times the applicant's weekly unemployment benefit amount in the current benefit year. *This subdivision does not apply if the applicant had wages paid of \$7,500 or more from the employer covered by this subdivision in each of the 16 calendar quarters prior to the effective date of the benefit account.*

(Emphasis added.) Reak claims that the statute does not apply to him because he dissolved Allan Reak Excavating, Inc. before applying for benefits and is not, therefore, any longer a business owner. He also argues that even if he is a business owner within the meaning of the statute, the exemption from the statute applies to him because he

meets the requirement of receiving “wages paid of \$7,500 or more” in each of the 16 calendar quarters preceding establishment of his benefit account. *Id.*

Reak first contends that he was no longer a business “owner” when he applied for benefits because he had dissolved his business. To interpret statutory language, we must discern and effectuate the intention of the legislature. Minn. Stat. § 645.16 (2010). If the legislature’s intent is obvious from the text of a statute, we must not engage in further construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004) (quotation omitted). Further, we must construe the statute as a whole and interpret each section in relation to surrounding sections. *Am. Fam. Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

Here, the only reasonable interpretation of the word “owner” includes a person who has dissolved or sold a business but seeks benefits based on wages that he received from the business during the period of his ownership. The receipt of benefits is tied to “wage credits,” which are defined as “the amount of wages paid within an applicant’s . . . employment.” Minn. Stat. § 268.035, subd. 27 (2010). For the purpose of benefit eligibility, this definition connects the period during which an applicant was paid wages to the period during which the applicant was a business owner. Further, the language of Minn. Stat. § 268.085, subd. 9, computes the wages received by an owner during the 16 calendar quarters before the effective date of the benefit account by connecting the status of the applicant as owner to the time during which the owner was paid wages. Thus, for purposes of Minn. Stat. § 268.085, subd. 9, we conclude that Reak’s status as a business owner was necessarily determined by referring to the period when he was employed by

and received wages from Allan Reak Excavating, Inc. To give any other meaning to the term “owner” would be absurd and unreasonable. *See* Minn. Stat. § 645.17(1) (2010) (“the legislature does not intend a result that is absurd, impossible of execution, or unreasonable”).

Alternatively, Reak contends that even if he were a business owner within the meaning of the statute, he should qualify for unemployment benefits because the wages that he received should have been averaged over the quarters in each year so that he meets the minimum pay requirements. For a business owner to qualify for more than five weeks of benefits, he must have received “\$7,500 or more from the employer covered by this subdivision in *each of* the 16 calendar quarters prior to the effective date of the benefit account.” Minn. Stat. § 268.085, subd. 9 (emphasis added).

This issue was addressed in *Soderquist v. Universal Servs. Telecom Tech Inc.*, 774 N.W.2d 729 (Minn. App. 2009). There, we interpreted the legislature’s inclusion of the word “each” in the statute to require a benefits applicant “to have received wages of \$7,500 in *every one* of the 16 calendar quarters preceding her discharge before she was eligible to receive benefits.” *Id.* at 732 (emphasis added). We also noted that our literal construction of the language pertaining to the applicant’s receipt of wages in “each” of the 16 quarters was “consistent with other provisions of the statute that allow the use of averaging formulas in establishing methods of wage computation only under prescribed circumstances.” *Id.* Consistent with *Soderquist*, we conclude that the exemption from Minn. Stat. § 268.085, subd. 9, does not apply here. Consequently, the ULJ’s decision

that Reak was ineligible to receive unemployment benefits for more than five weeks is supported by the findings and the relevant law.

Affirmed.