

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1345**

Terence Taylor,
Relator,

vs.

Northern Tier Retail LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 17, 2021
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 39315288-3

Terence Taylor, Bloomington, Minnesota (pro se relator)

Northern Tier Retail LLC, St. Louis, Missouri (respondent)

Anne B. Froelich, Keri Phillips, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits for a limited time because he requested withdrawal of funds from his 401(k) account before he filed for unemployment benefits. We affirm.

FACTS

Relator Terence Taylor worked as a cashier for respondent Northern Tier Retail LLC (Northern Tier) from 2004 to March 25, 2020. He worked 32 hours per week for \$12.90 per hour. During his employment, Northern Tier contributed to a 401(k) retirement plan for Taylor. On about March 23, 2020, Taylor requested withdrawal of \$7,945.86 from his 401(k) account because "the stock market was going down quickly." Taylor did not pay a penalty for the withdrawal because he was of a sufficient age. *See* 26 U.S.C. § 72(t)(2)(A) (2018) (providing that distributions from a qualified retirement plan are generally subject to an increased tax, but not if the employee is at least 59.5 years old). He received a lump-sum payment and deposited the money in his checking account.

On April 13, 2020, Taylor applied for unemployment benefits from respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility based on Taylor's withdrawal from his 401(k) account.

Taylor appealed the determination of ineligibility, and an evidentiary hearing was held before a ULJ. The ULJ determined that the \$7,945.86 withdrawal from Taylor's 401(k) account was deductible from his unemployment benefits and that Taylor was

ineligible for unemployment benefits from the week of March 23, 2020, when he requested the withdrawal, to the week ending on August 1, 2020.

Taylor requested reconsideration, and the ULJ affirmed his determination. This certiorari appeal follows.

DECISION

In an unemployment-benefits appeal, if the relevant facts are not in dispute, we review a determination whether an applicant is eligible to receive unemployment benefits *de novo*. *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

Minn. Stat. § 268.085, subd. 3c (2020), provides: “An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, will receive, or has applied for pension, retirement, or annuity payments from any plan contributed to by a base period employer” Minn. Stat. § 268.085, subd. 3c(a). A base period employer contributed to a plan when the contribution is excluded from the definition of wages under Minn. Stat. § 268.035, subd. 29 (2020). *Id.* The definition of “wages” in that provision specifically excludes the “amount of any payment made to, or on behalf of, an employee under a plan established by an employer that makes provision for employees generally . . . , including any amount paid by an employer for insurance or annuities, or into a plan, to provide for a payment, on account of . . . retirement.” Minn. Stat. § 268.035, subd. 29(a)(1).

Minn. Stat. § 268.085, subd. 3c, provides for the reduction of an applicant’s unemployment benefits based on retirement payments. “If the payment is made in a lump sum, that sum is divided by the applicant’s last level of regular weekly pay from the

employer to determine the weeks of payment.” Minn. Stat. § 268.085, subd. 3c(d). If the retirement payment for one week is equal to or more than the applicant’s weekly amount of unemployment benefits, then the applicant is ineligible for benefits for that week. *Id.*, subd. 3c(e). However, an applicant may nonetheless be eligible for unemployment benefits if he receives a lump-sum retirement payment and “immediately deposits that payment in a qualified pension plan or account” or if “that payment is an early distribution for which the applicant paid an early distribution penalty.” *Id.*, subd. 3c(b).

Taylor requested and received a lump-sum payment from a retirement plan to which a base period employer, Northern Tier, contributed. Northern Tier’s contributions were not wages under Minn. Stat. § 268.035, subd. 29(a)(1), because they were made on behalf of an employee under a retirement plan. The exceptions for lump-sum payments under Minn. Stat. § 268.085, subd. 3c(b), do not apply because Taylor did not deposit the payment into another qualified pension plan or account; nor was the payment an early distribution for which Taylor paid an early distribution penalty.

Taylor’s last level of regular weekly pay was \$412.80 (i.e., 32 hours per week at \$12.90 per hour). Division of Taylor’s lump-sum payment of \$7,945.86 by his last level of regular weekly pay, \$412.80, yields 19.25 weeks of ineligibility. *See id.*, subd. 3c(d). It is undisputed that Taylor’s retirement payment for one week was greater than his weekly benefit amount. *See id.*, subd. 3c(e). Thus, Taylor was ineligible for unemployment benefits for 19 weeks, commencing the week of March 23, when he requested the withdrawal of the funds from his retirement account. *See id.*, subd. 3c(a). In sum, the ULJ did not err in determining Taylor’s eligibility for unemployment benefits.

Taylor argues that his withdrawal from his 401(k) account was not a payment from a pension because it was a “one time cash withdrawal” and was not paid out on a monthly basis. But the relevant statute specifically accounts for situations in which a retirement payment is made in a lump sum. *Id.*, subd. 3c(b), (d). Moreover, although Taylor characterizes the 401(k) account as merely a “saving account” consisting of “money that [he] paid in through payroll deductions,” the record demonstrates that the payment came from a retirement plan to which Northern Tier contributed. Taylor’s withdrawal from that account is therefore deductible from his unemployment benefits under Minn. Stat. § 268.085, subd. 3c.

Taylor also argues that he requested the withdrawal from his 401(k) account a couple weeks before he filed for unemployment benefits. But the relevant statute provides that “[a]n applicant is *not eligible* to receive unemployment benefits for any week the applicant . . . *has applied for* pension, retirement, or annuity payments from any plan contributed to by a base period employer.” *Id.*, subd. 3c(a) (emphasis added). Thus, the statute takes into account circumstances in which an applicant’s request for retirement funds occurred before the applicant’s request for unemployment benefits.

Lastly, Taylor argues that “[i]n hindsight, if I had known about this clause in the law I would have simply waited until my unemployment benefits expired before I withdrew the money.” Although Taylor is understandably frustrated, “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2020). This court must follow the plain language of the relevant statutes. *See Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458 (Minn. 2016) (“If the meaning of a statute is

unambiguous, the plain language of the statute controls.”). Under those statutes, the ULJ correctly determined that Taylor was ineligible for unemployment benefits.

Affirmed.