

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1961**

Richard W. Truax,  
Relator,

vs.

CFT Communications, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 1, 2009  
Affirmed  
Lansing, Judge**

Department of Employment and Economic Development  
File No. 21100056-3

Richard W. Truax, 1911 Hilltop Lane, Hastings, MN 55033-3330 (pro se relator)

CFT Communications, Inc., 1911 Hilltop Lane, Hastings, MN 55033-3330 (respondent)

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

## UNPUBLISHED OPINION

LANSING, Judge

Richard Truax appeals, by writ of certiorari, an unemployment-law judge's determination that his noncovered employment made him ineligible for benefits. Because a corporate officer who owns more than twenty-five percent of a corporation is excluded from unemployment-insurance coverage unless the corporation files an election to include the officer in the unemployment-compensation system and because the corporation did not file a coverage election, we affirm.

### FACTS

CFT Communications (CFT), a corporation that lays fiber-optic cable, is wholly owned by Richard Truax. In July 2007 CFT employed Truax as its chief executive officer and its only Minnesota employee. During this time, CFT paid unemployment taxes to the Minnesota Department of Employment and Economic Development (DEED). Truax sought unemployment benefits when CFT stopped paying him in February 2008. DEED determined that Truax was ineligible because he owned more than twenty-five percent of CFT and CFT had not filed a coverage election.

Truax appealed the denial of benefits. At the hearing Truax testified about his wages at CFT, his incomplete knowledge of unemployment law, and his reliance on his accountant. Truax's accountant provided testimony about CFT, the DEED notices after unemployment-law amendments in 2005, the confusion over elected coverage, the tax implications, and CFT's failure to elect coverage.

The unemployment-law judge (ULJ) determined that Truax had worked in noncovered employment and was not eligible for unemployment benefits. Truax requested reconsideration. The ULJ denied his request and affirmed the ineligibility decision. By writ of certiorari, Truax appeals.

### **D E C I S I O N**

We review a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision were affected by error of law or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). Based on that review, we may affirm, reverse, or modify the ULJ's decision and may also remand the case for further proceedings. *Id.*

Minnesota unemployment-insurance law designates certain employment as “noncovered.” Minn. Stat. § 268.035, subd. 20 (Supp. 2007). Effective January 1, 2005, the legislature amended the list of noncovered employment to include “employment of a corporate officer, if the officer owns [twenty-five] percent or more of the employer corporation. . . .” 2004 Minn. Laws ch. 183, § 10, at 262 (currently codified at Minn. Stat. § 268.035, subd. 20(28)). In a corresponding amendment the legislature made minor changes to the statute providing for coverage election by employers. *Compare* Minn. Stat. § 268.042, subd. 3(a) (2002) (stating that employer may elect coverage by filing “a written election”) *with* Minn. Stat. § 268.042, subd. 3(a) (Supp. 2007) (stating that employer may file election “by electronic submission in a format prescribed by the commissioner”). These changes became effective July 1, 2005. 2004 Minn. Laws ch. 183, § 14, at 265.

The ULJ correctly applied the current provisions of Minnesota unemployment-insurance law to deny Truax's unemployment-benefits application. Because Truax owned one-hundred percent of CFT, his employment was not covered unless CFT filed an election under Minn. Stat. § 268.042, subd. 3(a). CFT did not file a coverage election. Because Truax's employment was not covered, he had no wage credits to establish a benefits account. *See Samuelson v. Prudential Real Estate*, 696 N.W.2d 830, 832 (Minn. App. 2005) (stating that person working in "noncovered employment may not establish an unemployment benefits account"). And without a benefits account, Truax does not meet the requirements to receive unemployment benefits. *See* Minn. Stat. § 268.069, subd. 1 (Supp. 2007) (listing requirements).

Truax advances three substantive arguments against the ULJ's decision: (1) the statutes are vague, (2) he was unaware of the change in the law, and (3) DEED breached an obligation that arose when he paid unemployment taxes.

Statutes are void for vagueness if they define an act in a way that encourages discriminatory and arbitrary enforcement or define the required or forbidden act or acts with terms considered so vague that people must guess their meanings. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858 (1983); *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 564 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). The definition of noncovered employment is plain. If a corporate officer owns twenty-five percent or more of the corporation, then the officer has noncovered employment. Minn. Stat. § 268.035, subd. 20(28). The provisions of Minn. Stat. § 268.042, subd. 3(a) also plainly state that any employer that has noncovered

employment performed for it may, subject to the commissioner's approval, elect to have that employment considered as covered employment. Both statutory provisions are plainly written, do not force people to guess about their meaning, and are not vague.

Second, Truax asserts that he was unaware of the change in the law. DEED sent notices to existing employers when the law changed in 2005. Truax formed CFT in 2007—two years after the amendment became effective. Truax cites no authority to support his argument that DEED had an obligation to notify all subsequent employers of existing law. Truax and his accountant admitted that CFT did not file the election form. Truax's lack of knowledge does not provide a justification for failing to comply with the law. *See Bucko v. First Minn. Sav. Bank, F.S.B.*, 471 N.W.2d 95, 97-98 (Minn. 1991) (affirming employer's duty to obey employment statute, despite employer's claimed ignorance).

Finally, DEED did not breach any obligation to Truax. DEED presumes that the amount computed for unemployment benefits is correct and the employer bears the burden to show that the amount is incorrect. Minn. Stat. § 268.057, subd. 1 (Supp. 2007). The legislature has specifically provided that “[t]here is no equitable . . . allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (Supp. 2007). Employers can, however, apply for a credit adjustment for unemployment taxes paid, and if the amount is incorrect, the commissioner can issue a credit without interest. Minn. Stat. § 268.057, subd. 7(a) (Supp. 2007). If a credit cannot be used, then the commissioner refunds, “without interest, the amount erroneously paid.” *Id.* DEED, in its brief in this appeal, noted a previous unpublished opinion of this court that invoked the credit or refund

provisions on similar facts. *See Jackson v. Global Mktg. Opportunities, Inc.*, No. A06-2090, 2007 WL 2993836, at \*3 (Minn. App. Oct. 16, 2007) (stating that “DEED offered, as required by statute, to refund to [relator] the amount she paid into the unemployment-compensation system during the two-year period that she was deemed to have engaged in noncovered employment” and citing Minn. Stat. § 268.057, subd. 7(a) (2006)); *see also* Minn. Stat. § 480A.08, subd. 3 (2008) (setting forth procedure for citing unpublished opinion).

The ULJ did not err by denying Truax benefits. CFT’s available remedy is to apply for a refund of the unemployment taxes that it paid during the eight months that Truax, as its sole employee, engaged in noncovered employment.

**Affirmed.**