

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20160270
Emmons County No. 2015-CV-00036

JB Construction Inc.,

Petitioner and Appellant,

v.

Job Service North Dakota,

Respondent and Appellee.

**Appeal from District Court, Emmons County, North Dakota
South Central Judicial District
Honorable Sonna Anderson**

Appeal from Order for Judgment dated June 20, 2016
and Judgment dated June 22, 2016

REPLY BRIEF OF APPELLANT JB CONSTRUCTION INC.

Submitted by,

Michael J. Geiermann
GEIERMANN BERGESON
& GULER LAW OFFICES, P.C.
Attorney for Appellant
PO Box 2196
Bismarck ND 58502-2196
Telephone: (701) 223-1986
Email: gmann@gbg-lawoffice.com

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LAW AND ARGUMENT

[¶ 1] In its Brief, Job Service sets forth the following main points for the affirmation of the order: (1) the plain language of the statute (N.D.C.C. § 52-01-01(17)) controls (¶ 23); (2) the exemption under the statute does not belong to the corporation (¶ 24); and (3) the requirement that there be concurrence of the corporate officer. JB will address these arguments as well as several others.

[¶ 2] Job Service argues that under the plain language of the statute, and as found by the appeals referee, the statute refers to officers rather than offices in creating the exemption. Job Service then points out the appeal referee's statement "its use of the singular "officer" and singular pronouns in establishing the exemption further supports a conclusion that the exemptions are individual. (JA P. 43). Job Service's position and the appeals referee's logic runs contrary to N.D.C.C. § 1-01-35 which states "words used in the singular number include the plural and words used in the plural number include the singular, except when a contrary intention plainly appears." There is no contrary intention and the logic of both Job Service and the appeals referee is incorrect. Therefore, the singular/plural designation is not helpful in the resolution of the issue. In contrast, JB would urge this Court to review the plain language of this statute in a common sense manner as argued previously by JB. There are three requirements to be met for the exemption. JB satisfied all of the requirements under the statute. It was simply sanctioned in this matter because it did not file the right form. (See Joint Appendix (JA), P. 18, L. 21-23).

[¶ 3] Job Service then argues that the exemption under N.D.C.C. § 52-01-01(17) does not belong to the corporation and that argument should be rejected. (Brief, ¶ 24). Contrary to the assertions of Job Service, a plain reading of the statute will reveal that the exemption does belong to the corporation and not the corporate officers. It is undisputed that JB filed for exemptions in 2000 and in 2009 when corporate officers were replaced and all of the statutory requirements were made, no additional form was filed. JB, as a corporation, filed for the exemption and believed that the exemption continued throughout the change of officers. The officers did not file for the exemption because they are not required to do so. The fact that the exemption belongs to the corporation is also supported by testimony from Melissa Parks, the only witness who testified on behalf of Job Service. She testified that the employer has to request that a corporate officer's wages be exempt from unemployment insurance taxes. (JA. P. 20, L. 8-22; P. 21, L. 1-19). She also testified that her audit revealed that "they" had not requested the exemption for Vance or Jesse. The "they" that Ms. Parks is referring to is the corporation. Therefore, the exemption does belong to the corporation and it can claim that exemption for officers who meet the three statutory requirements. Harvey, Jesse and Vance all met the requirements of the statute and should all be exempt. It is also interesting to note that while Harvey was granted an exemption in 2000, Job Service considers him still to be exempt even though he went from vice president to president. The switching of positions within the corporation did not require Harvey to file an additional exemption and

did not somehow disqualify him from the protection under the statute. (JA P. 19, L. 4-16).

[¶ 4] The next argument made by Job Service revolves around the apparent requirement in the statute in regard to concurrence by the corporate officers. The statute in pertinent part states, “the corporation with the concurrence of the officer may exclude that officer’s service from employment...”. See N.D.C.C. § 52-01-01(17)(a)(1). Job Service takes the position that it needs to be informed of the concurrence of the officer. JB disagrees. First of all, the statute does not require notification of Job Service of the concurrence of the officer. It is clearly implied by the filing of the application, the corporate officer agrees with the action taken by the corporation as the corporation must seek the exemption. If there are issues among the corporate officers in regard to obtaining the exemption, that is an internal corporate issue which needs to be decided by the corporation before it applies for the exemption. Applying for the exemption clearly indicates that the parties have met the statutory requirements of ownership, corporate officer status, and employment. Concurrence is implied.

[¶ 5] In addition, Job Service argues that the form requires the social security numbers of each of the corporate officers and their signature. While the form may require that, the statute does not. All the statute requires is that the three criteria are met. The administrative or ministerial requirement that social security numbers and signatures be provided is not required under the law and cannot serve as a basis of Job Service’s adverse decision as to JB.

CONCLUSION

[¶ 6] For all of the reasons stated herein, JB respectfully requests this Court to reverse the decision of Job Service.

Dated this 11th day of October, 2016.

GEIERMANN BERGESON
& GULER LAW OFFICES, P.C.
Attorneys for Appellant
P.O. Box 2196
Bismarck ND 58501-2196
Telephone: (701) 223-1986
Email: gmann@gbg-lawoffice.com

By: /s/ Michael J. Geiermann
Michael J. Geiermann (ID #04174)

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2016, the following documents:

Reply Brief of Appellant JB Construction, Inc.

were filed electronically by e-mail with the Clerk of the North Dakota Supreme Court at supclerkofcourt@ndcourts.gov and were served electronically on the following:

Michael T. Pitcher
Attorney at Law
Office of the Attorney General
500 N. Ninth St.
Bismarck, ND 58501-4509
Email: mtpitcher@nd.gov

/s/ Michael J. Geiermann
Michael J. Geiermann